THE FINANCIAL SERVICES COMMISSION OF ONTARIO

PENSION BULLETIN

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The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

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GENERAL ANNOUNCEMENTS

Pension Division Staff Changes

Marilyn Johnson has accepted the assignment of Pension Officer in the Pension Plans Branch.

Effective November 3, 2003, Roger Smithies completed his secondment to the Ministry of Finance and resumed his position of Senior Manager, Pension Policy. Jerry Williams has returned to his position of Senior Policy Consultant in the Pension Policy Unit.

FSCO Pension Advisory Committees — Membership as of November 2003

Accounting and Assurance Advisory Committee

Besler, Jason
French, Mike
Racanelli, Nick
Wade, Jack
Eigl, Charlie **(C)**
Preis, Katherine
Turner, Eric
Walker, Albert **(VC)**

Actuarial Advisory Committee

Benjamin, Gavin
DiRisio, Wendy
Hutchinson, Laurie **(VC)**
Newman, Laura
Pitcher, Clare
Young, Wilson
Cohen, Lorne **(C)**
Hart, David
Levy, Thomas
Peng, Peter
Robertson, Marcus

Investment Advisory Committee

Andrews, Doug
Franks, Jim
Kyle, Claire
Mills, Daniel
Pond, Robin **(VC)**
Wirth, Alf
Butera, Michael
Grantier, Bruce **(C)**
Mercier, Eileen
Pennal, Peter
Schaefer, Klaus

Legal Advisory Committee

Forgie, Jeremy
Healy, Priscilla
Nachshen, Gary **(C)**
Padfield, Michael
Rowe, Kevin
Winfield, Gregory
Gold, Murray **(VC)**
Lokan, Andrew
O'Reilly, Hugh
Rienzo, Doug
Whiston, Bethune

(C) denotes Chair **(VC)** denotes Vice-Chair

COURT/ PROSECUTION MATTERS

The information set out below is current to December 3, 2003.

Court Matters

I. Monsanto

On June 5, 2003, the Supreme Court of Canada granted leave to Monsanto Canada Inc. and the Association of Canadian Pension Management to appeal the Court of Appeal's decision. The Court of Appeal held that subsection 70(6) of the PBA requires a distribution of surplus assets on partial wind up. A tentative date for hearing the appeal has been set for February 16, 2004.

II. Ontario Teachers' Pension Plan Board (Anne Stairs)

In a decision issued on June 18, 2002, the Divisional Court ordered the Superintendent to issue an order directing the Ontario Teachers' Pension Plan Board to pay Ms. Stairs a pre-retirement death benefit pursuant to a separation agreement, subject to section 51 of the PBA. On September 3, 2002, the Court heard a motion by the Board to vary the decision insofar as quantum is concerned. The Court's decision on the motion was released on December 5, 2002. The Court also determined that the valuation date for the purposes of the calculation of quantum was the date of the divorce. The Court held that Ms. Stairs was entitled to not more than 50% of the pre-1987 death benefit plus 50% of the post-1986 death benefits to the date of divorce. The Court issued a declaration in respect of the pre-1987 amounts and directed the Superintendent to issue an order in respect of the post-1986 amounts. Ms. Stairs was awarded $40,000 plus disbursements in costs.

The Board applied for and obtained leave from the Court of Appeal to appeal the decision on quantum. Ms. Stairs applied for and obtained leave from the Court of Appeal to cross appeal the decision on quantum. The appeals were heard by the Court of Appeal on November 10, 2003 and the decision was reserved.

III. National Steel Car Limited

The Superintendent consented to the transfer of assets from the Amended Pension Plan for Salaried Employees of National Steel Car Limited (the "Salaried Plan") to the Amended Pension Plan for Hourly Employees of National Steel Car Limited (the "Hourly Plan"). The Superintendent's consent was given after submissions opposing the transfer were made by some members of the Salaried Plan who were unhappy with the fact that the Salaried Plan's surplus would be merged into the Hourly Plan's fund, which had a deficit. The letter giving the consent stated that anyone dissatisfied with the consent could request a Financial Services Tribunal hearing.

The hearing was held by the Financial Services Tribunal on January 15 to 17, 2002. On May 31, 2002, the Financial Services Tribunal released its decision. In response to a motion brought by National Steel Car at the hearing, a majority decision held that the Financial Services Tribunal has no jurisdiction to conduct a hearing where the Superintendent has consented to the transfer of assets, relying upon the express wording of subsection 89(4). One panel member dissented, finding that there was jurisdiction based on the HOOPP and other cases and on a purposive reading of the PBA. The panel unanimously found that if there was jurisdiction, the Superintendent's consent would have been upheld, as surplus was not an "other benefit" to be considered under subsection 81(5) of the PBA.

The Salaried Plan members have appealed this decision to the Divisional Court. The appeal is set to be heard on January 29 and 30, 2004.

IV. Marshall-Barwick Limited

The issue in this hearing is whether a Notice of Proposal ("NOP") proposing to refuse to approve the partial wind up report (because a member allegedly terminated for cause was not included in the partial wind up group) should be upheld. The hearing was held September 9, 2002. The panel of the Financial Services Tribunal released its decision on November 29, 2002 upholding the Superintendent's NOP and directing the Administrator to file a revised wind up report that includes, in the partial wind up group, the member terminated for cause.

The company has appealed this decision to the Divisional Court. No date has been set yet for hearing the appeal.

Prosecution Matters

I. Mimik Industries Inc.

Charges were laid against the employer and the President of the employer for failing to remit required contributions to the pension plan. The first appearance was on June 13, 2002. The trial was adjourned to November 10, 2003 and new trial dates were set for May 11 and 18, 2004.

II. Club 300 Bowl Inc.

Charges were laid against the corporation and its two directors for non-remittance of employer and employee contributions, failure to file Annual Information Returns and failure to file Financial Statements. The first appearance was on July 24, 2002. On July 30, 2003, the corporation and one of the directors pleaded guilty to 8 counts related to the failure to pay pension contributions and the failure to file financial statements. The defendants were fined $7,900.

III. Microcolour Dispersions Ltd.

Charges were laid against the corporation and its director for non-remittance of employer contributions. The first appearance was on September 30, 2002. A pre- trial conference was on January 13, 2003. The trial was originally set for September 19 and 22, 2003 but was adjourned to May 10 and 11, 2004.

IV. Rosko Forestry Operations Ltd.

Charges were laid against the employer and a corporate officer of the employer for failing to remit employer and employee contributions and for breach of the deemed statutory trust covering employee contributions. The first appearance in respect of the breach of trust charges was on May 22, 2003 in Haileybury, Ontario. The first appearance for the non-remittance charges was on June 2, 2003 in London, Ontario, at which time the non-remittance charges were moved to Haileybury to be heard with the breach of trust charges. A pre-trial conference was held on September 8, 2003. The next appearance is on December 11, 2003.

V. Christopher Bain

Mr. Bain was a director and officer of a company (Microcolour Dispersions Ltd.) that failed to remit to the employee pension plan both employer and employee pension contributions. Bain was convicted in his personal capacity for permitting the company to contravene the PBA. He was placed on probation and required to make restitution to the plan. He failed to comply with the probation order and was charged with breach of probation. He pleaded guilty to breach of probation and sentencing is scheduled to take placed on December 12, 2003.

VI. International Paper Canada Inc.

Charges laid for failing to file Financial Statements for 1998, 1999 and 2000, for failing to file Annual Information Returns for 1999, 2000 and 2001 and for failing to pay the Annual Information Return filing fees for 1999, 2000 and 2001. The first appearance was on March 18, 2003 at Old City Hall. On October 2, 2003, the defendant pleaded guilty to all charges and fines in the amount of $14,000 were imposed.

VII. International Paper Company Canada Inc.

Charges were laid against the employer for failing to file financial statements in respect of two pension plans. The first appearance was on July 22, 2003. The matter was adjourned to October 15, when the employer pleaded guilty to all charges and fines in the amount of $16,000 were imposed.

VIII. Slant/Fin Ltd./Ltee.

Charges were laid against the employer for failing to file four financial statements in respect of the Employee Retirement Plan of Slant/Fin Limited. The first appearance is January 15, 2004.

LEGISLATIVE CHANGES/ REGULATORY POLICIES

Financial Services Commission of Ontario

Commission des services financiers de l'Ontario

SECTION:	Deadlines
INDEX NO.:	D050-802
TITLE:	Deadline for Early Filing of Actuarial Funding Valuation Reports — Regulation 909 s. 14
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (July 2003)
EFFECTIVE DATE:	July 15, 2003

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

Section 14 of the Regulation gives the Plan Administrator the ability to choose the valuation date for a report filed under that section, provided the valuation date is no later than 3 years after the valuation date for the report last filed under that section. However, for any plan for which the report last filed indicated solvency concerns, a new report is required to be filed with a valuation date no later than 1 year from the valuation date of the report last filed.

If the Administrator chooses to file a new report with a valuation date that is prior to the 3rd anniversary or the 1st anniversary, as the case may be, of the effective date of the report last filed under section 14 (an "intra-valuation report"), the administrator must file the intra-valuation report within 9 months of the selected valuation date. Administrators should be aware that if the intra-valuation report is filed more than 9 months after the selected valuation date, FSCO reserves the right to reject such a report.

Until an intra-valuation report is actually filed, the Administrator retains the option to choose a valuation date for the report that is no later than 3 years or 1 year, as the case may be, after the valuation date of the last filed section 14 valuation report. This is so whether or not the Administrator has indicated an intention to file the intra-valuation report. Therefore it is not necessary for Administrators to seek, nor does FSCO grant, extensions of time for filing intra-valuation reports.

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION:	Locked-In Accounts
INDEX NO.:	L200-400
TITLE:	2004 LIF Maximum Payment Amount Table
APPROVED BY:	Deputy Superintendent, Pensions
PUBLISHED:	FSCO website (December 2003)
EFFECTIVE DATE:	January 1, 2004

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

Note: LIF maximum payment amount tables for 2003 and prior years are found under the archived L050- series of FSCO pension policies.

The table on the following page has been prepared by the Financial Services Commission of Ontario ("FSCO"). Additional copies of this table and copies of policies published by FSCO about the Ontario LIF are available on FSCO's website at www.fsco.gov.on.ca, or may be picked up in person at the reception desk, 4th Floor, 5160 Yonge Street, North York, Ontario.

Interest assumptions used in the table on the following page:

(1) 6.00%, which represents the greater of the CANSIM B14013 rate for November 2003 (5.24%) and 6.00% for the first 15 years, and

(2) 6.00% for the years remaining to the end of the year in which the LIF owner attains 90 years of age. (Assumption to age 90 is for the purpose of maximum payment calculation only. The balance of a LIF must be used to purchase a life annuity by the end of the year in which the LIF owner attains 80 years of age.)

Percentages shown must be prorated for the initial fiscal year if less than twelve months. Part of a month is treated as a full month.

2004 Maximum Annual Payment Amount Table for an Ontario Life Income Fund (LIF)

Age at January 1, 2004	New Age During 2004	Years to End of Year Age 90 is Attained	Maximum Payment as a Percentage of the LIF Balance as at January 1, 2004*
48	49	42	6.19655%
49	50	41	6.23197%
50	51	40	6.26996%
51	52	39	6.31073%
52	53	38	6.35454%
53	54	37	6.40164%
54	55	36	6.45234%
55	56	35	6.50697%
56	57	34	6.56589%
57	58	33	6.62952%
58	59	32	6.69833%
59	60	31	6.77285%
60	61	30	6.85367%
61	62	29	6.94147%
62	63	28	7.03703%
63	64	27	7.14124%
64	65	26	7.25513%
65	66	25	7.37988%
66	67	24	7.51689%
67	68	23	7.66778%
68	69	22	7.83449%
69	70	21	8.01930%
70	71	20	8.22496%
71	72	19	8.45480%
72	73	18	8.71288%
73	74	17	9.00423%
74	75	16	9.33511%
75	76	15	9.71347%
76	77	14	10.14952%
77	78	13	10.65661%
8	79	12	11.25255%
79	80	11	11.96160%

*The maximum annual payment percentage is calculated on the basis of a twelve-month fiscal year to December 31, 2004 using the interest assumptions on the previous page.

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION:	Wind Up
INDEX NO.:	W100-440
TITLE:	Restrictions on Payments in Deficit Situations — Regulation 909 ss. 29(7) and (8)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (November 2003)
EFFECTIVE DATE:	December 1, 2003

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

A question has arisen as to whether an administrator may transfer the commuted value or purchase a life annuity for members, former members, and other beneficiaries when a plan is being wound up in whole or in part with a deficit that requires additional funding under section 75 of the PBA.

The answer depends on whether all the pensions and other benefits being funded under section 75 would be guaranteed by the Pension Benefits Guarantee Fund (PBGF) under section 84 of the PBA.

Where a plan is winding up in whole or in part, subsections 70(2) and (3) of the PBA impose restrictions on payments that can be made out of the pension fund as follows:

> *(2) No payment shall be made out of the pension fund in respect of which notice of proposal to wind up has been given until the Superintendent has approved the wind up report.*
>
> *(3) Subsection (2) does not apply to prevent continuation of payment of a pension or any other benefit the payment of which commenced before the giving of the notice of proposal to wind up the pension plan or to prevent any other payment that is prescribed or that is approved by the Superintendent.*

Subsections 29(7) and (8) of the Regulation contain provisions that deal with the timing of certain payments that may be made when plans are being wound up:

> *(7) Subject to the requirements of subsection (8), the administrator of a pension plan,*
>
> *(a) that is terminated;*
> *(b) that provides defined benefits; and*
> *(c) with respect to which no order has been made under subsection 83(1) of the Act,*
>
> *may, after the wind up report required under subsection (1) has been approved by the Superintendent, pay prior to the completion of any additional funding required under section 75 of the Act,*
>
> *(d) the accumulated value of any additional voluntary contributions;*
> *(e) the accumulated value of required contributions made by a member or former member; and*

(f) the value of any pension, deferred pension or ancillary benefits accrued as of the effective date of the wind up with respect to employment and remuneration until that date in accordance with the plan provisions, to the extent that such benefits have been funded and after appropriate adjustments for any payment made in accordance with clause (e).

(8) Where an employer is required to make payments into a pension plan under section 75 of the Act and all pensions and other benefits being funded under section 75 of the Act would not be guaranteed under section 84 of the Act,

(a) no funds of the pension plan shall be used to purchase a life annuity for any person entitled thereto; and

(b) where an election is made under clause 42(1)(a) or (b) of the Act, the maximum portion of the commuted value of the deferred pension that may be transferred is the amount, if any, of the contributions the employee was required to make under the plan plus any additional voluntary contributions made by the employee,

until a report is filed under section 32 certifying that there is no further amount to be funded or an order is made under subsection 83(1) of the Act with respect to the plan.

FSCO's position is that the combined effect of subsections 29(7) and (8) is:

- If all of the pensions and other benefits being funded under section 75 of the PBA would be guaranteed by the PBGF, the provisions in subsection 29(8) do not apply, and the administrator can make the payments described in subsection 29(7).
- If any of the pensions and other benefits being funded under section 75 of the PBA would not be guaranteed by the PBGF, the provisions in subsection 29(8) apply to restrict the payments that can be made out of the pension fund.

Note that subsection 29(9) of the Regulation contains provisions that address reductions to pensions and benefits when a plan is wound up in whole or in part with a deficit.

SUPERINTENDENT OF FINANCIAL SERVICES

Administrator Appointments — Section 71 of the *Pension Benefits Act*

1. PricewaterhouseCoopers as the Administrator of the Pension Plan For Employees of Port Colborne Iron Works Ltd. (Registration Number 0289439), effective immediately.

   DATED at Toronto, Ontario, this 9th day of October, 2003.

2. Morneau Sobeco as the Administrator of the Pension Plan For The Hourly Employees of Canadian Tack & Nail Limited (Registration Number 0241968), effective immediately.

   DATED at Toronto, Ontario, this 23rd day of July, 2003.

3. Sun Life as the Administrator of the Pension Plan for Salaried Employees of Cold Metal Products Limited (Registration Number 0969188), effective immediately.

   DATED at Toronto, Ontario, this 23rd day of July, 2003.

4. London Life as the Administrator of the Aimtronics Corporation Employees Pension Plan (Registration Number 0415943), effective immediately.

   DATED at Toronto, Ontario, this 4th day of July, 2003.

Notices of Proposal to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Commercial Aluminum (1993) Limited Hourly Employees Pension Plan, Registration Number 1010289 (the "Pension Plan");**

TO: **Thompson Actuarial Limited**
87 Wolverleigh Blvd.
Toronto ON M4J 1R8

Attention: Andre Choquet, FCIA, FSA
Actuary

Administrator of the Pension Plan

AND TO: **Commercial Aluminum Limited**
240 Barton Road
Weston ON M9M 2W6

Attention: Suzanne Lam-Fitzgibbon

Employer

AND TO: **SF Partners Inc. (formerly Solursh Feldman Goldberg Inc.)**
The Madison Centre
4950 Yonge Street, Suite 400
Toronto ON M2N 6K1

Attention: Brahm Rosen,
Senior Vice President

Trustee in Bankruptcy for Commercial Aluminum (1993) Limited

AND TO: **United Steelworkers of America**
115 Albert Street
P.O. Box 946
Oshawa ON L1H 7N1

Attention: Wess Dowsett

Staff Representative

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Commercial Aluminum (1993) Limited Hourly Employees Pension Plan, Registration No. 1010289, be wound up in full effective December 31, 2001.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer fails to make contributions to the pension fund as required by this Act or the regulation.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
5. All or a significant portion of the employer's business carried on by the employer at a specific location is discontinued.

6. All or part of the employer's business or all or part of the assets of the employer's are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for members of the employer's pension plan who becomes employee of the person.
7. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 20th day of June, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Pension Plan for Employees of Kanematsu (Canada) Inc., Registration No. 394650;**

TO: **Kanematsu (Canada) Inc.**
c/o Brans, Lehun, Baldwin LLP
2401-120 Adelaide Street West
Toronto, Ontario
M5H 1T1

Attention: Mr. Thomas C.H. Baldwin

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Employees of Kanematsu (Canada) Inc., Registration No. 394650 (the "Plan"), to Kanematsu (Canada) Inc. in the amount of $109,554 as at December 1, 1999, plus 50% of investment earnings on the surplus to the date of payment less 50% of expenses relating to the wind up of the Pension Plan for Employees of Kanematsu (Canada) Inc.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits and benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) among members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Kanematsu (Canada) Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 1, 1999.
3. As at December 1, 1999, the surplus in the Plan was estimated at $219,108.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 89% of the active members and 89% of other members (as defined in the application) and all of the former members and other persons entitled to payments from the fund, the surplus in the Plan at the date of payment, after deduction of expenses is to be distributed:
   a) 50% to the Employer; and
   b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act and section 8 (1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus to be distributed from the Plan (after adding investment earnings and deducting expenses related to the wind up of the Plan.)
7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 4th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Mr. Wade Schaefer, Mercer Human Resource Consulting

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Staff Pension Plan of the Institute of Chartered Accountants of Ontario, Registration No. 207290;**

TO: **The Public Accountants Council for the Province of Ontario**
Suite 901
1200 Bay Street
Toronto, Ontario
M5R 2A5

Attention: Mr. Peter LaFlair,
Registrar

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Staff Pension Plan of the Institute of Chartered Accountants of Ontario, Registration No. 207290 (the "Plan"), to The Public Accountants Council for the Province of Ontario in the amount of $669,897 as of July 1, 2000, subject to adjustment for investment earnings or losses and expenses, to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits and benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) among members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The Public Accountants Council for the Province of Ontario is the employer as defined in the Plan (the "Employer").
2. The Plan was partially wound up, effective July 1, 2000.
3. As at July 1, 2000, the surplus in the wind-up portion of the Plan was estimated at $946,530.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 100% of the affected active members and other members (as defined in the application) and 100% of the affected former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed: 25% to the affected beneficiaries of the Plan plus $10,000 per individual as defined in the Surplus Distribution Agreement. The remainder of the surplus will be refunded to the Employer.
6. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the refund of $669,897 as at July 1, 2000, which is estimated to be the remainder of the surplus in the Plan once the beneficiaries of the Plan affected by the partial wind up receive their entitlement as defined in the Surplus Distribution Agreement. Such amount to be adjusted for interest and expenses to the date of payment.

7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 10th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Mr. Peter LaFlair, The Public Accountants Council for the Province of Ontario

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Pension Plan for Designated Employees of Complete Packaging Limited, Registration No. 0698571;**

TO: **Complete Packaging Limited**
P.O. Box 24010
2470 Wyandotte Street East
Windsor ON N8Y 4Y9

Attention: Pat Dumas

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Designated Employees of Complete Packaging Limited, Registration No. 0698571 (the "Plan"), to Complete Packaging Limited in the amount of $118,503 as at March 31, 2001, plus investment earnings thereon to the date of payment less the expenses relating to the wind up of the Plan.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Complete Packaging is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective March 31, 2001.
3. As at March 31, 2001, the surplus in the Plan was estimated at $118,503.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 100% of the former members, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed in full to the Employer.
6. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan (after adding investment earnings and deducting the expenses related to the wind up of the Plan).
7. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(1)(b) and subsections 28(5) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 17th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Donna Wolfe, Cowan Wright Beauchamp Limited

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Frost Fence Inc. Bargaining Unit Pension Plan for Members of United Steelworkers of America, Registration Number 697441 (the "Plan");**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary

Appointed Administrator

AND TO: **Frost Fence Inc.**
250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer

Employer

AND TO: **United Steelworkers of America**
1031 Barton Street East
Room 113
Hamilton ON L8L 3E3

Attention: Mr. Ron Wyatt,
Staff Representative, Local 3561

Union representing the members of the Plan

AND TO: **Paul M. Casey & Associates, Ltd.**
c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON M5C 2V9

Attention: Mr. Adam Bryk

Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective December 20, 2002.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 17th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

[1]NOTE -- Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Pension Plan for Non-Union employees of Frost Fence Inc., Registration Number 697433 (the "Plan");**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary

Appointed Administrator

AND TO: **Frost Fence Inc.**
250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark
Chief Operations Officer

Employer

AND TO: **Paul M. Casey & Associates, Ltd.**
c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON M5C 2V9

Attention: Mr. Adam Bryk

Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective December 20, 2002.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 17th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Ward Press Limited Pension Plan, Registration Number 0583187 (the "Pension Plan");**

TO: **Sun Life Assurance Company of Canada**
225 King Street West
Toronto ON M4V 3C5

Attention: Paul Browett,
Pension Account Representative

Administrator of the Pension Plan

AND TO: **Ward Press Limited**
82 Carnforth Road
North York ON M4A 2K7

Attention: Donald Ward,
President

Employer

AND TO: **BDO Dunwoody Limited**
Royal Bank Plaza
P.O. Box 33
Toronto ON M5J 2J9

Attention: Mark G. Chow,
Vice-President

Receiver and Manager of Ward Press Limited

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for Ward Press Limited, Registration No. 0583187, be wound up in full effective June 30, 2001.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
4. All or a significant portion of the business carried on by the employer at a specific location is discontinued.
5. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

Ontario

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 30th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Pension Plan for The Employees of RNG Equipment Inc., Registration Number 491126 (the "Plan");**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Domenic Muro,
Compliance Support Specialist

Appointed Administrator

AND TO: **RNG Equipment Inc.**
Bay Wellington Tower, BCE Place
181 Bay St. Box 825, Suite 2040
Toronto ON M5J 2T3

Attention: Ms. Caryn McNeil,
Administrator

Employer

AND TO: **Blake, Cassels & Graydon LLP**
Box 25, Commerce Court West
199 Bay Street
Toronto ON M5L 1A9

Attention: Ms. Kathryn M. Bush

Counsel for the Trustee in Bankruptcy of RNG Group Inc. (formerly RNG Equipment Inc.)

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective November 30, 2001.

REASONS:

1. There was a cessation of employer contributions to the pension fund pursuant to clause 69(1)(a) of the Act.
2. All or a significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.
3. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 9th day of September, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Staff Pension Plan for Employees of Constitution Insurance Company of Canada, Registration No. 356204;**

TO: **Constitution Insurance Company of Canada**
500 University Ave.
Toronto, Ontario
M4G 1V7

Attention: Mr. F. Di Tomasso,
President and CEO

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Staff Pension Plan for Employees of Constitution Insurance Company of Canada, Registration No. 356204 (the "Plan"), to Constitution Insurance Company of Canada in the amount of $1,663,801.45 as at December 31, 2000, adjusted to reflect investment income and expenses to date of distribution.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me in writing of the distribution of surplus assets pursuant to section 79(3)(c) of the Act, to members, former members and other persons entitled to such payments in accordance with the Surplus Sharing Agreement made on November 15, 2000, in the amount of $713,057.77 as at December 31, 2000, adjusted to reflect investment income and expenses to date of distribution.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Constitution Insurance Company of Canada is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 31, 1993.
3. As at December 31, 2000, the surplus in the Plan was $2,376,859.22.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 67.95% of members and 94.74% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
   a) 70% to the Employer; and
   b) 30% to the beneficiaries of the Plan as defined in the Surplus Sharing Agreement made on November 15, 2000.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 70% of the surplus in the Plan adjusted to reflect investment income and the payment of expenses shall be refunded.
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5.1) and 28(6) of the Regulation.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 12th day of September, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Ms. Lily I. Hammer, Paliare Roland Barristers

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Retirement Plan for Salaried Employees of MIL Systems Engineering, Registration Number 684902 (the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Ms. Sharon A. Carew,
Senior Manager

Appointed Administrator

AND TO: **MIL Systems Engineering**
1150 Morrison Drive — Suite 200
Ottawa ON K2H 8S9

Attention: Mr. Garry M. Skinner,
VP Finance & Administration

Employer

AND TO: **Groupe Thibault Van Houtte & Associes Ltee**
70 Rue Dalhousie, Bureau 100
Quebec City, Quebec G1K 4B2

Attention: Mr. Patrice Van Houtte

Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective November 2, 2001.

REASONS:

1. The employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
2. A significant number of members have ceased to be employed by the employer as the result of the discontinuance or reorganization of all or part of the business of the employer pursuant to clause 69(1)(d) of the Act.
3. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 17th day of September, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Pension Plan for Employees of Sealcraft Inc., Registration Number 995522 (the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Ms. Lois J. Reyes,
Manager

Appointed Administrator

AND TO: **Sealcraft Inc.**
6525 Northam Dr.
Mississauga ON L4V 1J2

Attention: Ms. Joan Shepherd,
Personnel Manager

Employer

AND TO: **Schwartz Levitsky Feldman Inc.**
1167 Caledonia Road
Toronto ON M6A 2X1

Attention: Mr. Richard Kline

Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective October 16, 2002.

REASONS:

1. Failure of the employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. A significant number of members have ceased to be employed by the employer as the result of the discontinuance or reorganization of all of part of business of the employer pursuant to clause 69(1)(d) of the Act.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

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FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 17th day of September, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to Make an Order pursuant to section 19(1) of the Act, in respect of the **Boilermakers' National Pension Plan (Canada) Registration No. 0366708;**

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to register several amendments to the **Boilermakers' National Pension Plan (Canada), Registration No. 0366708,** under section 18(1)(d) of the Act;

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to revoke the registration of an amendment to the **Boilermakers' National Pension Plan (Canada)** as Amended, Restated and Consolidated to January 1988 under section 18(1)(e) of the Act.

TO: **Trustees of the Boilermakers' National Pension Plan (Canada)**
c/o J.J. McAteer & Associates
45 McIntosh Drive
Markham ON L3R 8C7

Attention: Ms. Susan Bird
Administrator

NOTICE OF PROPOSALS

I PROPOSE TO:

1. Make an Order under Section 19(1) of the Act that the Trustees of the Boilermakers' National Pension Plan (Canada), Registration No. 0366708 (the "Plan"), refrain from requiring Plan members to sign a certification and/or imposing any other administrative requirements not set out in the Plan, including but not limited to, the requirement that Plan members confirm that they will refrain from any union or non-union employment or non International Boilermaker Union employment in the Boilermaker Industry that is governed by the jurisdiction claimed in the Jurisdiction Section of the Constitution of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers as well as the Bylaws of the lodge, or any subordinate Lodge, which affect this employment.
2. Make an Order under Section 19(1) of the Act that the Trustees of the Plan ensure that the Plan as Amended and Restated as at January 1, 1997 (the "1997 Plan") is administered in accordance with the Act by not applying section 6.01 of the Plan to retiring Plan members.
3. Revoke the registration of section 4.01 of the Plan as Amended, Restated and Consolidated to January 1988 (the "1988 Plan") pursuant to section 18(1)(e) of the Act.
4. Refuse to register amendments to section 6.01 of the 1997 Plan, contained in Amendment No. 8 dated April 12, 2000 and Amendment No. 13 dated April 16, 2002, pursuant to section 18(1)(d) of the Act.
5. Refuse to register amendments to the first paragraph of section 8.02 of the Plan, contained in Amendment No. 9 dated March 21, 2001, Amendment No. 13 dated April 16, 2002 and Amendment No. 14 dated October 2, 2002 pursuant to section 18(1)(d) of the Act.
6. Refuse to register amendments to section 10.1 (ii) of the Plan, contained in Amendment No. 8 dated November 30, 2000.

REASONS FOR THE PROPOSALS TO REFUSE:

Section 6.01 of the Plan

1. The Plan is a multi-employer pension plan established July 1, 1971 (the "1971 Plan") for the benefit of members of the Boilermaker Union. It is administered by a Board of Trustees pursuant to the terms of the Plan. The Plan has members in several jurisdictions. Ontario is the major authority.
2. The 1971 Plan defined retirement as the cessation of "active participation in any occupation for wage or profit." Amendment No. 1 to the 1971 Plan adopted March 1, 1973 and effective July 1, 1971, defined retirement for the purposes of the 1971 Plan as the cessation of "active participation as a Boilermaker for wage or profit."
3. This provision was subsequently amended by Amendment No. 18 adopted August 16, 1988 and effective January 1, 1986 which extended the definition of retirement to include a cessation of employment with a participating employer "in any capacity."
4. The 1971 Plan was replaced by the Plan as Amended, Restated and Consolidated to January 1988 (the "1988 Plan"), which deleted the definition of retirement altogether and introduced the following provision at section 4.01:

   > For the purposes of this Plan, a Participant will not be deemed to be retired unless he has withdrawn and refrained from employment anywhere within the construction or construction related industry or trade in the jurisdiction of any Boilermaker Local in Canada or in the United States, either as an employee or on a self-employed basis, and he is not employed by an Employer in any capacity. The retirement date of a Participant shall be determined in accordance with this Section.

5. Under section 4.01 of the 1988 Plan a member was not deemed to have retired unless he had withdrawn from the construction or construction related industry. It made no distinction between members who retired at or before the normal retirement age.
6. The 1988 Plan was replaced by the 1997 Plan and section 4.01 of the 1988 Plan was substantially retained as section 6.01 of the 1997 Plan.
7. The 1997 Plan was amended by Amendment No. 6 dated April 12, 2000 with an effective date of January 1, 2000. Amendment No. 6 replaced several sections of the 1997 Plan, however, section 6.01 was retained as is.
8. Section 6.01 of the 1997 Plan was amended by Amendment No. 13 adopted April 16, 2002, with an effective date of January 1, 2000. Whereas section 6.01 applied to retirement both at and before the normal retirement age, Amendment No. 13 purports to limit the application of section 6.01 to Plan members who retire on an Enhanced Early Retirement Date and on an Unreduced Early Retirement Date pursuant to sections 6.04 and 6.05 of the Plan.
9. Under section 40(2) of the Act an ancillary benefit for which a member has met all the eligibility requirements under the terms of the pension plan necessary to exercise the right to receive payment of a benefit shall be included in calculating the member's pension benefit.
10. Once a Plan member satisfies all the eligibility requirements set out in the Plan he is entitled to exercise the right to retire on an enhanced early retirement date or on an

unreduced early retirement pension. Section 4.01 of the 1988 Plan, in so far as it provided that a member was not deemed to be retired unless he had withdrawn from the construction or construction related industry, contravened the Act because it imposed a further condition after a member had satisfied the necessary requirement for the payment of his pension benefit.

11. The proposed amendment of section 6.01 of the Plan as set out in Amendment No. 13 restricts its application to Plan members who elect to retire under sections 6.04 and 6.05 of the Plan. It keeps in place the requirement that Plan members are not deemed to be retired unless they have withdrawn from the construction or construction related industry, after the Plan member has satisfied conditions set out in the Plan for the receipt of the early retirement benefit. Therefore, Amendment No. 13 does not establish an eligibility requirement for the receipt of an ancillary benefit under section 40(2). It is an additional restriction that is imposed after a member would have met the eligibility requirements under sections 6.04 and 6.05. It is therefore, in breach of section 40(2) of the Act.

Certification Requirement

12. Members of the Plan who are retiring prior to the normal retirement age are required to sign a document referred to as "Plan Member's Certification" certifying that they will refrain from any union or non union employment or non International Boilermaker Union employment in the Boilermaker Industry that is governed by the jurisdiction claimed in the Jurisdiction Section of the Constitution of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers as well as the Bylaws of their lodge, or any subordinate Lodge, which affect their employment. The members are required to sign the certification prior to receipt of the pension payments, which is not a requirement set out in the Plan.

13. Trustees of the Plan, by letter dated June 27, 2003, stated that Plan members are not, and have never been, prohibited from retiring if they fail to execute the certification and no Plan members have had pensions deferred, terminated or suspended or otherwise amended due to a failure to complete the certification. The Trustees also stated that the Plan requires members to confirm that they are retiring and the date upon which they expect to leave the trade. However, this requirement is not provided for in the Plan.

14. Section 19(3)(a) of the Act requires that the administrator ensure that the Pension Plan is administered in accordance with the filed documents in respect of which the Superintendent has issued an acknowledgement of application for registration or certificate of registration. Since the certification requirement and/or administrative requirement that a member confirm that he is retiring from the trade and the industry, are not included in the filed documents in respect of the Plan, such requirements cannot be enforced and are in contravention of the Act.

First paragraph of Section 8.02 of the Plan

15. Section 8.02 of the 1997 Plan provided that the pension benefits of a retired member would not be suspended if he is re-employed

with an employer who participated in the Plan. It made no distinction between members who retired at the normal retainment age and those members who retired prior to the normal retirement age.

16. Amendment No. 9 purports in part, to amend the first paragraph of section 8.02 of the Plan to provide for a reduction in pension benefits of members who retire on an Enhanced Early Retirement Date or on an Unreduced Early Retirement Date pursuant to sections 6.04 and 6.05 of the Plan and who are re-employed by an employer not participating in the Plan.
17. Amendments Nos. 13 and 14 propose to amend the first paragraph of section 8.02 of the Plan to provide that the reduction in pension benefits of members who retire pursuant to section 6.04 and 6.05 of the Plan be made "subject to the requirements and restrictions of the *Pension Benefits Act*, compliance to the extent required by the Canada Customs and Revenue Agency with conditions prescribed for registration of the Plan under the *Income Tax Act* and the receipt of any necessary approvals."
18. Under section 40(2) of the Act, a member who has met all the eligibility requirements for the receipt of an ancillary benefit is entitled to have that benefit included in calculating his pension benefit. In this case, a Plan member who elects to exercise their option to retire under section 6.04 and 6.05 of the Plan is entitled to have the ancillary benefits provided under these provisions used in calculating their pension benefits. The proposed amendments, Amendment Nos. 8, 13 and 14 purport to add a restriction to the continued receipt of the benefits contemplated by sections 6.04 and 6.05 of the Plan after members have met the eligibility requirements in the Plan and are in receipt of their pension benefits, in contravention of section 40(2) of the Act.

Section 10.01(ii) of the Plan

19. Amendment No. 9 purports to amend section 10.01(ii) of the Plan to allow a Plan member to terminate membership in the Plan if no Contributions were received on his behalf from a participating employer for a period of 6 months. This option is made subject to the condition that the member withdraw and refrain from employment anywhere within the construction or construction related industry or trade in the jurisdiction of any Boilermaker Local of Canada or the United States, either as an employee or on a self-employed basis.
20. Section 38(1)(a) of the Act provides that if contributions are not paid or required to be paid by or on behalf of a member of a multi-employer pension plan for 24 consecutive months or less if specified in the Pension Plan, the member is entitled to terminate his or her membership in the Pension Plan. Under section 38(2) of the Act, a member who exercises the right to membership termination is deemed to also have terminated his or her employment.
21. Under section 38(1) of the Act a pension plan is given the option to allow a member to terminate his or her plan membership if contributions are not paid for a shorter period of time than 24 months. It does not provide for any other conditions to be added to the members' right to terminate membership in a pension plan. Amendment No. 8 purports to add a further condition to the members right to terminate membership in the Plan in contravention of section 38(1) of

the Act. In addition to the requirement that no contributions be received on a member's behalf for a period of 6 months, it also requires that members withdraw from employment in the construction or construction related industry or trade either as an employee or on a self-employed basis.

Conclusion

22. Therefore, the Superintendent proposes to revoke the registration of section 4.01 of the 1988 Plan pursuant to section 18(1)(e) of the Act, refuse to register the amendments to section 6.01 of the Plan as set out in Amendment Nos. 6 and 13, refuse to register amendments to the first paragraph of section 8.02 of the Plan as set out in Amendments Nos. 9, 13 and 14 and refuse to register the amendment to section 10.01(ii) of the Plan as set out in Amendment No. 8 pursuant to section 18(1)(d) of the Act.
23. The Superintendent also proposes to order under section 19(1) of the Act that Trustees of the Plan refrain from requiring Plan members to sign a certificate confirming that they will not work in any union or non-union Boilermaker Union employment or requiring that Plan members confirm that they are retiring from employment within the construction or construction related industry or trade as a precondition for the receipt of an enhanced early retirement benefit, and that the Trustees refrain from applying section 6.01 of the Plan to retiring Plan members.
24. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION contact the Registrar of the Tribunal by phone at 416-226-7752, or toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED, REVOKE THE REGISTRATION OF THE AMENDMENT AS PROPOSED HEREIN AND I MAY REFUSE TO REGISTER THE AMENDMENTS, AS PROPOSED IN THIS NOTICE OF PROPOSAL.

DATED at North York, Ontario, September 22, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Registered Pension Plan for Cunningham Foundry A Division of Quint Industries Inc., Registration Number 0432450 (the "Pension Plan");**

TO: **Maritime Life Assurance Company**
7 Maritime Place
PO Box 1030
Halifax NS B3J 2X5

Attention: Kari LeLacheur,
Legislative Advisor,
Pension Services

Administrator of the Pension Plan

AND TO: **Cunningham Foundry A Division of Quint Industries Inc.**
21 Yale Cres.
St. Catharines ON L2R 2Y6

Attention: Brian Crawford,
Chief Financial Officer

Employer

AND TO: **KPMG Inc.**
PO Box 976
21 King Street West, Suite 510
Hamilton ON L8N 3R1

Attention: John Athanasiou,
Corporate Recovery Specialist

Trustee in Bankruptcy of Cunningham Foundry A Division of Quint Industries Inc.

AND TO: **CAW Local 523**
16 Steel Street
Welland ON L3B 3L9

Attention: Gord Chatwin

Union

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Registered Pension Plan for Cunningham Foundry A Division of Quint Industries Inc., Registration Number 0432450, be wound up in full effective July 31, 2002.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
4. All or a significant portion of the business carried on by the employer at a specific location is discontinued.
5. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 22nd day of September, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to payment out of the **Pension Plan for Employees of Rio Tinto North American Services Limited, Registration No. 553362;**

TO: **QIT-Fer et Titane Inc.**
1625 Marie-Victorin
Tracy, Quebec
J3R 1M6

Attention: Rolland G. Morier,
Senior Vice-President, Finance

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Employees of Rio Tinto North American Services Limited, Registration No. 553362 (the "Plan"), to QIT-Fer et Titane Inc., the balance remaining after payments to the surplus sharing members have been made as defined in the Surplus Distribution Agreement. Said amount is estimated to be $7,531,352 as at September 30, 2002. This amount shall be adjusted for investment earnings and expenses to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all the surplus entitlements of the members have been paid or otherwise provided for in accordance with the terms of the Surplus Distribution Agreement.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. QIT-Fer et Titane Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective January 1, 2000.
3. As at September 30, 2002, the surplus in the Plan was estimated at $8,814,230.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and the members that the amount of the surplus to be distributed to each surplus sharing member is equal to 2 years of additional pension payments (without the amount of any indexing paid on and after January 1, 2001) plus interest at the rate of 6% per annum from the wind-up date. After the payments to each surplus sharing member have been made, the remaining balance will be paid to the applicant as set out in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 89.6% of the surplus to the Employer as of the effective date of the wind up.
7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 6th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

Copy: Ms. Susan E. Fremes, Mercer Human Resource Consulting

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Pension Plan for Employees of Outboard Marine Corporation of Canada Ltd., Registration Number 232967 (the "Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Ms. Debbie Gallagher, Consultant

Appointed Administrator

AND TO: **Outboard Marine Corporation of Canada**
100 Sea-Horse Drive
Waukegan IL 60085

Attention: Ms. Darlene Lomax, Manager, Benefits Administration

Employer

AND TO: **Alex D. Moglia & Associates**
1325 Remington Rd. STE H
Schaumberg IL 60173

Attention: Mr. Alex D. Moglia

Trustee in Bankruptcy

AND TO: **Ernst & Young**
35 Metcalfe Street, Suite 1600
Ottawa ON K1P 6L5

Attention: Mr. Greg Adams

Receiver

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wholly wound up effective August 1, 2000 through December 20, 2000.

REASONS:

1. Cessation or suspension of Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all of part of business of the Employer pursuant to the clause 69(1)(d) of the Act.
4. All or a significant part of the business has been discontinued at a specific location, pursuant to clause 69(1)(e) of the Act.
5. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 16th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Retirement Plan for Employees of Outboard Marine Corporation of Canada Ltd., Registration Number 232975 (the "Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Ms. Debbie Gallagher, Consultant

Appointed Administrator

AND TO: **Outboard Marine Corporation of Canada**
100 Sea-Horse Drive
Waukegan IL 60085

Attention: Ms. Darlene Lomax, Manager, Benefits Administration

Employer

AND TO: **Ernst & Young**
35 Metcalfe Street, Suite 1600
Ottawa ON K1P 6L5

Attention: Mr. Greg Adams

Receiver

AND TO: **Alex D. Moglia & Associates**
1325 Remington Rd. STE H
Schaumberg IL 60173

Attention: Mr. Alex D. Moglia

Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wholly wound up effective August 1, 2000 through April 9, 2001.

REASONS:

1. Cessation or suspension of Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all of part of business of the Employer pursuant to clause 69(1)(d) of the Act.
4. All or a significant part of the business has been discontinued at a specific location, pursuant to clause 69(1)(e) of the Act.
5. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 16th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Uniroc Mfg., Division of Atlas Copco Canada Inc. Canadian Non-Union Employees' Pension Plan, Registration No. 513457;**

TO: **Atlas Copco Canada Inc.**
Secoroc, a Division of
Atlas Copco Canada Inc.
1157 Blair Road
Burlington ON L7M 1P9

Attention: Mr. Jeff Hagar,
Vice President Finance

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Uniroc Mfg., a Division of Atlas Copco Canada Inc. Canadian Non-Union Employees' Pension Plan, Registration No. 513457 (the "Plan"), to Atlas Copco Canada Inc. in the amount of $703,618.30 as at August 26, 1994, plus investment earnings and losses thereon to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that provision has been made for the pension benefits of one unlocated plan member and that the employees' share of the surplus has been distributed to the members, former members and others as set out in the application.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Atlas Copco Canada Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective August 26, 1994.
3. As at August 26, 1994, the surplus in the Plan was estimated at $1,279,306.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 100% of the active members and other members (as defined in the application) and 89% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
   a) 55% to the Employer; and
   b) 45% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 55% of the surplus in the Plan (adjusted for investment earnings and expenses in accordance with the surplus sharing agreement and application.)
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 17th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Mr. Leon Caron,
Atlas Copco Canada Inc.

Ms. Susan L. Nickerson,
McMillan Binch LLP

Mr. Michael Mazzuca,
Koskie Minsky

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Alderbrook Industries Limited Pension Plan, Registration Number 0574764 (the "Pension Plan");**

TO: **Mackenzie Financial Corporation**
150 Bloor Street West
Suite M111
Toronto ON M5S 3B5

Attention: David Lin,
Pension Officer

Administrator of the Pension Plan

AND TO: **Alderbrook Industries Limited**
885 Sandy Beach Road
Pickering ON L1W 3N6

Attention: Linda Parker,
Human Resources Manager

Employer

AND TO: **Deloitte & Touche Inc.**
BCE Place
181 Bay Street
Suite 1400
Toronto ON M5J 2V1

Attention: Huey Lee,
Financial Advisory Services

Receiver and Manager of Alderbrook Industries Limited

AND TO: **Shiner Kideckel Zweig Inc.**
10 West Pearce Street
Suite 4
Richmond Hill ON L4B 1B6

Attention: Joel Kideckel

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Alderbrook Industries Limited Pension Plan, Registration Number 0574764, be wound up in full effective March 31, 2002.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
4. All or a significant portion of the business carried on by the employer at a specific location is discontinued.
5. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 20th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to payment out of the **AM International Inc. Pension Plan for Hourly Employees, Registration No. 0361998;**

TO: **PricewaterhouseCoopers Inc.**
c/o Ayesworth Thompson Phelan O'Brien
222 Bay Street
Ernst & Young Tower
PO Box 124, 18th Floor
Toronto Dominion Centre
Toronto ON M5K 1H1

Attention: Peter R. Welsh

Applicant

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to payment out of the AM International Inc. Pension Plan for Hourly Employees, Registration No. 0361998 (the "Plan"), to PricewaterhouseCoopers Inc., Trustee in Bankruptcy for the Estate of AM International Inc., in the amount of $154,861 as at March 31, 2002, plus investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that the members' share of the negotiated surplus has been paid.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The Applicant is the Trustee in Bankruptcy of AM International Inc. (the employer as defined in the Plan (the "Employer").
2. The Plan was wound up effective October 17, 1996.
3. As at March 31, 2002, the surplus in the Plan was estimated at $399,640.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 100% of the active members and other members (as defined in the application) and 83.3% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
   a) 38.75% to the Employer; and
   b) 61.25% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Applicant has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 38.75% of the surplus as at March 31, 2002, plus investment earnings to the date of payment.
7. The application appears to comply with section 78 and subsection 79(3) (a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 20th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Tony Karkheck,
PricewaterhouseCoopers Inc.

Dona Campbell,
Sack Goldenblatt Mitchell

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Mosler Canada Inc., Registration Number 941732 (the "Plan");**

TO: **Canada Life Assurance Company**
330 University Avenue
Toronto ON M5G 1R8

Attention: Ms. Milica Stojsin,
Plan Wind-up Consultant,
Investments & Pensions

Appointed Administrator

AND TO: **Mosler Canada Inc.**
150 Britannia Road East, Unit 12
Mississauga ON L4Z 2A4

Attention: Ms. Janet Leigh

Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective September 23, 2001.

REASONS:

1. Cessation or suspension of employer contributions to the pension fund pursuant to clause 69(1)(a) of the Act.
2. All or a significant part of the business has been discontinued at a specific location pursuant to clause 69(1)(e) of the Act.
3. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 20th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Dresser Canada, Inc. Pension Plan for Hourly Employees of Bay State Abrasive Operation, Registration No. 0220723;**

TO: **Halliburton Group Canada Inc.**
333 — 5th Avenue S.W.
Suite 1000
Calgary, Alberta
T2P 3B6

Attention: Mr. Ron Ruckaber,
Senior Benefits Advisor

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Dresser Canada, Inc. Pension Plan for Hourly Employees of Bay State Abrasive Operation, Registration No. 0220723 (the "Plan"), to Halliburton Group Canada Inc. in the amount of $932,914 as at January 1, 2003, plus investment earnings to the date of payment, less payment of actuarial expenses of the Plan.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Halliburton Group Canada Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective November 1, 1990.
3. As at November 1, 1990, the surplus in the Plan was estimated at $677,295.
4. The application is based on a court order for the distribution of surplus funds pursuant to section 7a(2)(c) of Regulation 708/87 that was granted to the Employer by the Ontario Superior Court of Justice on February 6, 2002, whereby 100% of the surplus in the Plan at the date of payment is to be distributed to the Employer.
5. The Employer has applied, pursuant to section 78 of the Act, and clause 8(2) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan (plus investment earnings and less payment of actuarial expenses of the Plan.)
6. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(2) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

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Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 29th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Mr. Greg Winfield,
McCarthy Tetrault

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Dresser Canada, Inc. Pension Plan for Office Union Employees of Bay State Abrasive Operation, Registration No. 0474346;**

TO: **Halliburton Group Canada Inc.**
333 — 5th Avenue S.W.
Suite 1000
Calgary, Alberta
T2P 3B6

Attention: Mr. Ron Ruckaber,
Senior Benefits Advisor

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Dresser Canada, Inc. Pension Plan for Office Union Employees of Bay State Abrasive Operation, Registration No. 0474346 (the "Plan"), to Halliburton Group Canada Inc. in the amount of $139,478 as at January 1, 2003, plus investment earnings to the date of payment, less payment of actuarial expenses of the Plan.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Halliburton Group Canada Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective November 1, 1990.
3. As at November 1, 1990, the surplus in the Plan was estimated at $97,240.
4. The application is based on a court order for the distribution of surplus funds pursuant to section 7a(2)(c) of Regulation 708/87 that was granted to the Employer by the Ontario Superior Court of Justice on February 6, 2002, whereby 100% of the surplus in the Plan at the date of payment is to be distributed to the Employer.
5. The Employer has applied, pursuant to section 78 of the Act, and clause 8(2) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan (plus investment earnings and less payment of actuarial expenses of the Plan.)
6. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(2) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

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Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 29th day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Mr. Greg Winfield,
McCarthy Tetrault

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration No. 0355404;**

TO: **United Dominion Industries Corporation**
c/o Mr. Jeffrey L. Nugent
SPX Corporation
501 South Heilbron Drive
MEDIA, PA 19063
USA

Applicant and Employer

AMENDED NOTICE OF PROPOSAL (amended October 31, 2003)

WHEREAS United Dominion Industries Limited made an application to the Superintendent of Financial Services for the consent of the Superintendent to payment of money that is surplus dated December 21, 2000.

AND WHEREAS effective June 30, 2001, United Dominion Industries Limited was amalgamated with UDI Nova Scotia Holding Company pursuant to the *Companies Act* of Nova Scotia, being Chapter 81 of the Revised Statutes of Nova Scotia, 1989 to form United Dominion Industries Corporation.

AND WHEREAS as a result of such amalgamation, United Dominion Industries Corporation assumed all of the obligations and liabilities of United Dominion Industries Limited, including the sponsorship of the Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration No. 0355404, and is therefore the Applicant and Employer.

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Hourly-Rated Employees of Koehring Provincial Crane, A Unit of AMCA International Limited, Registration No. 0355404 (the "Plan"), to United Dominion Industries Corporation in the amount of $2,204,469 as at June 30, 2000, plus investment earnings thereon to the date of payment less the expenses related to the wind up of the plan and the distribution of surplus.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph #5 below) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. United Dominion Industries Corporation is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective June 30, 2000.
3. As at June 30, 2000, the surplus in the Plan was estimated at $2,755,586.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and 100% of the members, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:

a) 80% to the Employer; and

b) 20% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.

6. The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 80% of the surplus in the Plan adjusted for investment earnings and expenses related to the wind up of the Plan.

7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 31st day of October, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

c.c. Mr. Douglas Rienzo,
Osler, Hoskin & Harcourt LLP

Mr. Jeremy Forgie,
Blake, Cassels & Graydon LLP

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IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to consent to a transfer of assets from the **Pension Plan for Salaried Employees of TCG Materials Limited**, **Registration Number 390526** to the **Pension Plan for the Designated Employees of Blue Circle Canada Inc. and Subsidiary Companies, Registration Number 530493**, under section 81(5) of the Act;

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to register an amendment to the **Pension Plan for Salaried Employees of TCG Materials Limited**, **Registration Number 390526**, under section 18(1)(d) of the Act.

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to register an amendment to the **Pension Plan for the Designated Employees of Blue Circle Canada Inc. and Subsidiary Companies**, **Registration Number 530493,** under section 18(1)(d) of the Act.

TO: **Blue Circle Canada Inc.**
c/o St. Marys Cement Inc.
55 Industrial St., 2nd floor
Toronto, ON M4G 3W9

Attention: Patricia Brundit,
Manager Human Resources Services

Employer and Administrator

NOTICE OF PROPOSALS TO REFUSE

I PROPOSE TO:

1. **REFUSE TO CONSENT** to the transfer of assets referred to in the Report on the Actuarial Valuation for Funding Purposes as of January 1, 1999, prepared by William M. Mercer Limited (the "Transfer Report"), from the Pension Plan for Salaried Employees of TCG Materials Limited, Registration Number 390526 (the "TCG Plan") to the Pension Plan for the Designated Employees of Blue Circle Canada Inc. and Subsidiary Companies (formerly the Pension Plan for the Designated Employees of St. Marys Cement Corporation and Subsidiary Companies), Registration Number 530493 (the "Blue Circle Plan"), under section 81(5) of the Act.
2. **REFUSE TO REGISTER** Amendment No. 1 to the TCG Plan effective December 31, 1998, attached to the Application for Registration of Pension Plan Amendment (the "TCG Amendment No. 1"), under section 18(1)(d) of the Act.
3. **REFUSE TO REGISTER** Amendment No. 4 to the Blue Circle Plan effective January 1, 1999, attached to the Application for Registration of Pension Plan Amendment (the " Blue Circle Amendment No. 4"), under section 18(1)(d) of the Act.

REASONS FOR THE PROPOSALS TO REFUSE:

1. An application was made to the Superintendent of Financial Services (the "Superintendent") for consent to a transfer of assets from the TCG Plan to the Blue Circle Plan as of January 1, 1999 (the "Asset Transfer"). As required by Financial Services Commission of Ontario Policy A700-251 the Transfer Report was filed with the

Superintendent as part of the application for consent to the Asset Transfer.

2. The Transfer Report shows that the TCG Plan (which is the exporting plan) has a solvency excess of $637,800 as of January 1, 1999 and the Blue Circle Plan (which is the importing plan) has a solvency deficiency of $6,802,700 as of January 1, 1999, before the Asset Transfer and will have a solvency deficiency of $6,164,900 as at January 1, 1999, after the Asset Transfer.
3. Section 81(5) of the Act requires the Superintendent's consent to the Asset Transfer, whether section 81(1) or section 81(8) of the Act applies to that transfer. Section 81(5) provides that:

   > The Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the original pension plan or that does not meet the prescribed requirements and qualifications.

4. Section 11(a) of FSCO Policy A700-251 provides that:

   > The Superintendent may decide that the benefits are not protected where:
   >
   > (a) the transfer ratio of the importing plan is less than the highest transfer ratio of the exporting plans, and is less than 1.0;

5. The Transfer Report indicates that transfer ratio of the exporting plan (the TCG Plan) prior to the Asset Transfer is 1.19 (after rounding) and the transfer ratio of the importing plan (the Blue Circle Plan) is .93 (after rounding) both before and after the Asset Transfer. Therefore, the pension and other benefits of the members and former members of the exporting plan (the TCG Plan) are not protected in the Asset Transfer.
6. Therefore the Superintendent proposes to refuse to consent to the Asset Transfer from the TCG Plan to the Blue Circle Plan under section 81(5) of the Act.
7. In order to facilitate the Asset Transfer, Blue Circle Canada Inc. filed an application to register the TCG Amendment No. 1 with the Superintendent.
8. TCG Amendment No. 1 provides that members shall cease accruing benefits under the TCG Plan effective December 31, 1998, shall commence accruing benefits under the Blue Circle Plan effective January 1, 1999, and the assets and liabilities shall be transferred from the TCG Plan to the Blue Circle Plan, subject to the prior approval of such transfers by the appropriate regulatory authorities (which would include the Superintendent). Upon the transfer of assets and liabilities, the TCG Plan shall be terminated. The TCG Plan, with the TCG Amendment No. 1, would cease to comply with the Act because the pension and other benefits of the members and former members of the TCG Plan would not be protected under section 81(5) of the Act if the Asset Transfer and therefore the TCG Amendment No. 1 were consented to and registered respectively.
9. In order to facilitate the Asset Transfer, Blue Circle Canada Inc. filed an application to register the Blue Circle Amendment No. 4 with the Superintendent.
10. Blue Circle Amendment No. 4 provides that TCG Plan members shall commence accruing benefits under the Blue Circle Plan on terms identical to the TCG Plan up to June 30, 1999 and effective July 1, 1999 the TCG Plan members shall contribute and accrue benefits in accordance with the Blue Circle Plan; the Blue Circle Plan is amended to

assume liabilities for all benefits accrued under the TCG Plan in respect of all active and non-active members of the TCG Plan; and the assets from the TCG Plan shall be transferred to the Blue Circle Plan after all regulatory approvals have been obtained. The Blue Circle Plan with the Blue Circle Amendment No. 4 would cease to comply with the Act because the pension and other benefits of the members and former members of the TCG Plan would not be protected under section 81(5) of the Act if the Asset Transfer and therefore the Blue Circle Amendment No. 4 were consented to and registered respectively.

11. Therefore the Superintendent proposes to refuse to register the TCG Amendment No. 1 and the Blue Circle Amendment No. 4, under section 18(1)(d) of the Act.
12. Such further and other grounds as may come to my attention.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

For further information, contact the Registrar of the Tribunal by phone at 416-226-7752, or toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO CONSENT TO THE ASSET TRANSFER AND I MAY REFUSE TO REGISTER THE TCG AMENDMENT NO. 1 AND THE BLUE CIRCLE AMENDMENT No. 4, AS PROPOSED IN THIS NOTICE OF PROPOSALS.

DATED at Toronto, Ontario, July 18, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

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Notices of Proposal to Refuse to Consent to Applications of Surplus out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF an Application under section 78(1) of the Act submitted by Weavexx Corporation. in respect of the **Retirement Income Plan For Arnprior Hourly-Paid Employees of Weavexx Corporation, Registration No. 0264655 (the "Plan");**

AND IN THE MATTER OF an amendment to the Plan passed by the Board of Directors of Weavexx Corporation on September 23, 1999 (the "Plan Amendment");

AND IN THE MATTER OF a Wind Up Report submitted by Weavexx Corporation in respect of the Plan dated September 5, 1997 (the "Report");

AND IN THE MATTER OF a proposal to issue an Order under section 88 of the Act.

TO: **BTR Canada Holdings Inc.**
c/o Ms. Allyn Jerome
Benefit Specialist
Invensys Inc.
33 Commercial St. B52-S1
Foxboro MA 02035

Employer and Administrator of the Plan

AND TO: **Watson Wyatt Canada**
One Queen St. East Suite #1100
Toronto Ontario M5C 2Y4

Attention: Paul Timmins

Agent for the Employer and Administrator of the Plan

AND TO: **Amalgamated Clothing and Textile Workers' Union, Local 2324**
Ontario Joint Council, Union of Needletrade, Industrial and Textile Employees
P.O. Box 20007,
RPO Cornwall Square,
Cornwall Ont.
K6H 7H6

Attention: Patrick Quig

Union

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO CONSENT to the application dated September 22, 1999, submitted by Weavexx Corporation for the payment of surplus on the windup of the Plan to the Employer under subsection 78(1) of the Act (the "Application").

REASONS FOR REFUSAL:

1. The application and Plan Amendment were submitted by Weavexx Corporation, who, at the time the application was made and the Plan Amendment adopted, was the employer and administrator of the Plan. On December 2, 1999, a Transfer and Assignment of Pension Plan agreement was entered into between Weavexx Corporation and BTR Canada Inc. As a result, BTR Canada Inc, who is now the employer and administrator of the Plan, is receiving this notice.
2. Weavexx Corporation submitted the application to withdraw surplus from the Plan, and the Plan Amendment to the Superintendent of Financial Services (the "Superintendent") on October 5, 1999.

3. The application does not comply with clause 79(3)(b) of the Act because it fails to establish the employer has an entitlement to surplus under this Plan.
4. The Plan is the continuation of a Plan established in 1957 by a predecessor employer, *The New Retirement Income Plan for the Employees of Kenwood Mills Limited* (the "1957 Plan"), under which a pension fund was established and a trust agreement was entered into between Kenwood Mills Limited and the Montreal Trust Company dated March 21, 1958 (the "1958 Trust agreement").
5. The 1957 Plan provided that all contributions of members and the Company shall be paid into a trust fund and administered by a trustee in accordance with an agreement between the trustee and the company. It also provided that should the Plan ever be discontinued, the contributions made by the Company cannot be withdrawn, but shall remain to the credit of the members, who shall be entitled to the paid-up benefits resulting from all contributions previously made by the Company on their behalf.
6. The preamble to the 1958 Trust Agreement included a clause that under the 1957 Plan "...funds will be remitted to the Trustee, which funds as and when received by the Trustee will constitute a trust fund to be held for the benefit of the employee members of the Plan or their beneficiaries;..."
7. The 1958 Trust Agreement also contained a clause (Article Third) that "...no part of the Trust Fund (other than such part as is required to pay taxes and administration fees and expenses) shall be used for, or diverted to, purposes other than for the exclusive benefit of the employee members of the Plan or their beneficiaries or estates." "Trust Fund" was defined in the 1958 Trust Agreement as all contributions received by the Trustee together with the income therefrom.
8. The 1958 Trust Agreement specifically provided that the Trustee's power to pay out funds on termination was subject to the provisions of Article Third. Similarly, the provision which granted the Company power to modify or amend the 1958 Trust Agreement was made subject to the provisions of Article Third.
9. The 1958 Trust Agreement did not contain a provision authorizing the Company to revoke the 1958 Trust Agreement.
10. There is no evidence that the 1958 trust was ever terminated or exhausted.
11. Therefore a trust was created in 1958 which covered surplus assets. The employer was not a beneficiary of the trust nor did it have the power to revoke the trust. Further, its power to amend the trust was subject to the provision that the funds were to be used for the exclusive benefit of the employee members of the Plan or their beneficiaries or estates.
12. The Plan was amended in 1981 to provide that in the event of discontinuance of the Plan, after providing for the maximum benefits permitted by Revenue Canada, any surplus must be returned to the Company. Similar language was used when the Plan was split into two separate plans in 1985, and when the Plan was again amended and restated effective January 1, 1988.
13. The Trust Agreement was restated and amended on March 1, 1989 to provide that, on termination, "...any balance remaining in the Trust Fund, after satisfaction of all

obligations accrued to the date of termination to employees and their beneficiaries participating in the Plan at the date of its termination not exceeding the maximum benefit limitations pursuant to the *Income Tax Act* (Canada) or other applicable legislation, may revert to the Company..."

14. The terms of the 1958 Trust Agreement do not authorize a payment of surplus to the Employer. The amendments referred to in paragraphs 12 and 13 constitute a revocation or partial revocation of the trust property which is not authorized in the original trust agreement, and are therefore invalid.
15. Such further and other reasons as may come to my attention.

AND I PROPOSE TO REFUSE TO CONSENT to register the Plan Amendment dated September 23, 1999.

REASONS FOR REFUSAL:

16. The Plan Amendment includes a paragraph that makes the Plan Amendment conditional on the Superintendent approving the payment of part of the surplus in the Plan to the employer. As the Superintendent proposed to refuse an application for payment of surplus to the employer, the condition of the Plan Amendment will not be met, and the Plan Amendment will not be operative. The Superintendent therefore proposes to refuse to register the Plan Amendment.
17. Such further and other reasons as may come to my attention.

AND I PROPOSE TO REFUSE TO APPROVE the wind up report dated September 5, 1997, pursuant to subsection 70(5) of the Act.

REASONS FOR REFUSAL:

18. Clause 70(1)(c) of the Act provides that the administrator of a pension plan that is to be wound up in whole or in part shall file a wind up report that sets out the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits.
19. The Report with addendum dated May 11, 1998, set out the distribution of pension benefit entitlements for the purposes of the Act. The Report identified a surplus of wind up assets over wind up liabilities, but did not propose a scheme of distribution of the surplus assets. The Report did indicate that the employer would be making an application to deal with the surplus, which the Superintendent is now proposing to refuse to consent to for reasons set out in paragraphs 1 to 14.
20. The Report does not comply with the Act because it does not contain a plan of distribution of all of the assets of the Plan as required by clause 70(1)(c) of the Act. Accordingly, the Superintendent may refuse to approve it under subsection 70(5) of the Act.
21. In addition, as the Report does not propose a distribution of surplus that complies with the applicable Plan and Trust documents and section 79(4) of the Act, it does not protect the interests of members and former members as required by subsection 70(5) of the Act.
22. As grounds for refusing to approve the wind up report relate to the absence of any distribution of surplus, and not to the proposed distribution of pension benefit entitlements that was set out in the Report, the distribution of pension benefit entitlements set out in the Report and authorized on behalf of the Superintendent of Pensions under subsection 70(3) by letter dated July 13, 1998,

shall continue to be valid pending the submission of a new wind up report that complies with the Act.

23. Such further and other reasons as may come to my attention.

AND I PROPOSE TO ORDER that the administrator of the plan prepare and deliver a complete wind up report that complies with subsection 79(4) of the Act, the 1957 Plan and the 1958 trust agreement by providing for the distribution of the surplus plan assets to members, former members, and other persons entitled to benefits pursuant to sections 88(2)(c) and 88(3) of the Act;

REASONS FOR THE PROPOSED ORDER:

24. Under section 88(2)(c) of the Act the Superintendent may make an order where the Superintendent is of the opinion that a report submitted in respect of a pension plan does not meet the requirements and qualifications of the Act, regulations or pension plan. For the reasons set out in paragraph 19 and 20, the Report submitted does meet the requirements of the Act or the Pension Plan for the purposes of section 88(2)(c).

25. As the employer has failed to establish an entitlement to surplus, subsection 79(4) of the Act applies with respect to the distribution of surplus accrued after December 31, 1986 among members, former members and any other persons entitled to payments under the plan on the date of wind up. For the period prior to January 1, 1987, surplus accrual is to be determined in accordance with the applicable Plan and trust documents which set out entitlement to the trust property on termination of the trust.

26. Subsection 70(2) of the Act requires the Superintendent to approve a wind up report before any payment may be made out of a pension plan that has issued a notice of proposal to wind up. Therefore, a new wind up report which complies with the Plan, the terms of the trust and Act is necessary to fully wind up the Plan and distribute the surplus assets to the members, former members and other persons entitled to payments out of the Plan.

27. As the Plan was terminated effective November 30, 1996, and a new wind up report is needed to distribute the surplus assets in the Plan, an Order under section 88 is needed to ensure the Plan is completely wound up and the surplus assets are distributed in accordance with the Act, Plan and Trust documents on a timely basis.

28. The new wind up report shall be delivered to the Superintendent with 60 days of an Order being made pursuant to this notice.

29. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal of Ontario (the "Tribunal") pursuant to subsection 89(6) of the Act, if, you deliver to the Tribunal, within thirty (30) days of the date of service of this Notice of Proposal, notice in writing requiring a hearing.[1]

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

ANY NOTICE REQUIRING A HEARING should be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU FAIL TO DELIVER TO THE TRIBUNAL within thirty (30) days from the date this Notice of Proposal is served on you a written notice that you require a hearing, I may make the order proposed in this Notice of Proposal.

DATED at Toronto, Ontario, this 30th day of May, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to consent to a transfer of assets from the **Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511**, to the **Weyerhauser Retirement Plan for Salaried Employees, British Columbia Registration No. 51-303** under section 80 of the Act;

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to register an amendment to the **Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511**, under section 18(1)(d) of the Act.

TO: **Bowater Canadian Forest Products Inc.**
1000 de la Gauchetiere West
Suite 2820
Montreal QC H3B 4W5

Attention: Claudine Morin-Massicotte
Administrator

NOTICE OF PROPOSALS

I PROPOSE TO:

1. **REFUSE TO CONSENT TO** the transfer of assets from the Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511 (the "Bowater Plan"), to the Weyerhauser Retirement Plan for Salaried Employees, British Columbia Registration No. 51-303 (the "Weyerhauser Plan") referred to in the Report on the transfer of assets and liabilities dated November 22, 2001 (the "Asset Transfer Report") with respect to members included in the Dryden/Ear Falls Asset Purchase Agreement as at September 29, 1998 under section 81 of the Act.
2. **REFUSE TO REGISTER** an amendment to the Bowater Plan in relation to the Application for Registration of Pension Plan Amendment (the "Amendment") dated March 19, 2001, under section 18(1)(d) of the Act.

REASONS FOR THE PROPOSALS TO REFUSE:

1. Bowater Canadian Forest Products Inc. ("Bowater") is the administrator of the Bowater Plan. Bowater and Weyerhauser Canada Ltd. ("Weyerhauser") entered into an Asset Purchase Agreement on August 4, 1998 relating to the sale of a Dryden/Ear Falls pulp, paper and lumber business (the "Asset Purchase Agreement"). Under the terms of the Asset Purchase Agreement Weyerhauser agreed to offer employment to a number of Bowater employees (the "Transferred Members"), and the companies agreed, subject to regulatory consent, that a pro rata share of the assets of the Bowater Plan would be transferred to the Weyerhauser Plan, calculated on the basis of the liabilities attributable to Transferred Members relative to the total liabilities of the Bowater Plan as at the Closing Date determined on a going concern basis and using the methods set out in Section 11.3(b)(v) of the Asset Purchase Agreement.
2. An application was made to the Superintendent of Financial Services (the "Superintendent") for consent to transfer assets from the Bowater Plan to the Weyerhauser Plan in respect of the Transferred Members determined as at September 29,

1998, pursuant to the terms of the Asset Purchase Agreement.

3. Prior consent of the Superintendent to the transfer of assets is required by section 80(5) of the Act. Section 81(5) provides that the Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the Bowater Plan.
4. Financial Services Commission of Ontario Policy A700-200 (the "Policy") stipulates the guidelines the Superintendent will follow when dealing with the transfers of assets resulting from the sale of a business. The tests for determining whether the proposed transfer complies with section 80(5) of the Act (referred to in the Policy as section 81(5)) are set out in paragraph (8)(a) of the Policy. Under paragraph (8)(a) of the Policy where a successor employer assumes responsibility in whole or in part for the pension benefits under the employer's pension plan, and under the wind up provisions of the plan the employer has a clear entitlement to surplus, the value of the assets to be transferred shall be assets having a market value as at the review date of not less than the lower of the asset transfer value or the solvency liability as set out in the transfer report.
5. The Transfer Report confirms that there is no surplus in the Bowater Plan on a solvency basis. Therefore no surplus will be transferred from the Bowater Plan to the Weyerhauser Plan.
6. The Asset Transfer Report sets out the amount of assets to be transferred from the Bowater Plan to the Weyerhauser Plan in accordance with (1) the terms of the Asset Purchase Agreement and (2) under paragraph (8) (a) of the Policy. The minimum transfer amount determined under the Policy is $1,733,614. Therefore, in order to protect the pension and other benefits of the Transferred Members the amount of assets to be transferred is $1,733,614.
7. The transfer amount calculated pursuant to the Asset Purchase Agreement is equal to $1,351,151 as at September 29, 1998. The Transfer Report recommends that based on the terms of the Asset Purchase Agreement, an amount of $1,351,151 should be transferred from the Bowater Plan to the Weyerhauser Plan. This amount is $382, 463 less than is required under paragraph 8(a) of the Policy. Therefore, the proposed transfer of assets does not protect the pension benefits and any other benefits of the Transferred Members for the purposes of section 80(5) of the Act.
8. In a letter dated November 19, 2002, William M. Mercer submitted that the Superintendent should approve the proposed asset transfer in the amount of $1,351,151 under paragraph (12) of the Policy. It states that the terms of the Purchase Agreement were negotiated on an arms-length basis, and that both parties believe the going concern transfer basis to be fair and equitable. Additionally, the proposed transfer amount represents a small proportion of the Bowater Plan assets.
9. Paragraph (12) of the Policy states that the Superintendent may consent to an asset transfer on an equitable basis under exceptional circumstances. The Superintendent is not aware of any exceptional circumstance in this case.

10. The proposed asset transfer is not equitable to the Transferred Members because this amount is $382, 463 less than is required under paragraph 8(a) of the Policy and therefore, an insufficient proportion of the assets in the Bowater Plan would be transferred to the Weyerhauser Plan.
11. Therefore the Superintendent proposes to refuse to consent to the transfer of assets from the Bowater Plan to the Weyerhauser Plan under section 80(5) of the Act.
12. In order to facilitate the transfer of assets referred to in the Transfer Report, Bowater filed an application to register an Amendment with the Superintendent. The Amendment provides for the transfer of the assets on account of the benefits of the Transferred Members to the Weyerhauser Plan, in accordance with the terms of the Asset Purchase Agreement.
13. Since the Amendment would effect an asset transfer that does not protect the pension and other benefits of the Transferred Members and the the Superintendent has proposed to refuse to consent to the transfer under section 80(5) of the Act, the Bowater Plan with the Amendment would cease to comply with the Act.
14. Therefore the Superintendent proposes to refuse to register the Amendment under section 18(1)(d) of the Act.
15. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, or toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO CONSENT TO THE TRANSFER OF ASSETS AND I MAY REFUSE TO REGISTER THE AMENDMENT, AS PROPOSED IN THIS NOTICE OF PROPOSAL.

DATED at North York, Ontario, July 18, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Revised Pension Plan for Salaried Employees of Marsh Engineering Limited, Registration Number 276030;**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney

Appointed Plan Administrator ("Administrator")

AND TO: **Marsh Engineering Limited**
118 West Street
Port Colborne ON L3K 4C9

Attention: Charlotte Watson,
Payroll Administrator

Employer

AND TO: **Marsh Instrumentation Inc.**
1016-C Sutton Drive
Burlington ON L7L 6B8

Attention: Ronald Bake, President

Participating Employer

AND TO: **Deloitte & Touche Inc.**
181 Bay Street, Suite 1400
BCE Place
Toronto ON M5J 2V1

Attention: Robert Paul,
Partner

Trustee in Bankruptcy

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Revised Pension Plan for Salaried Employees of Marsh Engineering Limited (the "Plan"), is registered under the Act as Registration Number 276030; and
2. Marsh Instrumentation Inc. is a participating employer in the Plan; and
3. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
4. The Superintendent of Pensions, appointed Arthur Andersen Inc. administrator of the Plan on May 15, 2000, and the Deputy Superintendent, Pensions, subsequently replaced them by appointing Morneau Sobeco as administrator on July 10, 2002; and
5. The Plan was ordered wound up by the Deputy Superintendent, Pensions, effective March 16, 2000; and
6. A wind up report has been filed by the Administrator, which report remains under review by staff; and
7. An application for a Declaration that the Guarantee Fund applies to the Plan was filed by the Administrator on May 29, 2003.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The funded ratio of the Plan has been estimated to be 68.06%.
2. The estimated claim against the Guarantee Fund as at the wind up date is $598,548.
3. The employer, Marsh Engineering Limited, was assigned into bankruptcy on December 6, 2000. The participating employer, Marsh Instrumentation Inc., was assigned into bankruptcy on December 7, 2000.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. The Administrator has also advised that if funds become available for the Plan from the estates of Marsh Engineering Limited and Marsh Instrumentation Inc., such funds will be used to refund any allocation amounts received from the Guarantee Fund.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 27th day of June, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

Notices of Proposal to Make a Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Revised Pension Plan for Hourly Rated Employees of Marsh Engineering Limited, Registration Number 384313;**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney

Appointed Plan Administrator ("Administrator")

AND TO: **Marsh Engineering Limited**
118 West Street
Port Colborne ON L3K 4C9

Attention: Charlotte Watson, Payroll Administrator

Employer

AND TO: **Marsh Instrumentation Inc.**
1016-C Sutton Drive
Burlington ON L7L 6B8

Attention: Ronald Bake, President

Participating Employer

AND TO: **Deloitte & Touche Inc.**
181 Bay Street, Suite 1400
BCE Place
Toronto ON M5J 2V1

Attention: Robert Paul, Partner

Trustee in Bankruptcy

AND TO: **United Steelworkers of America**
1031 Barton Street East
Hamilton ON L8L 3E3

Attention: Dave MacIntosh, Local President

Union Representative of the Plan members

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Revised Pension Plan for Hourly Rated Employees of Marsh Engineering Limited (the "Plan"), is registered under the Act as Registration Number 384313; and
2. Marsh Instrumentation Inc. is a participating employer in the Plan; and
3. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
4. The Superintendent of Pensions, appointed Arthur Andersen Inc. administrator of the Plan on May 15, 2000, and the Deputy Superintendent, Pensions, subsequently replaced them with Morneau Sobeco on July 10, 2002; and
5. The Plan was ordered wound up by the Deputy Superintendent, Pensions effective March 16, 2000; and
6. A wind up report has been filed by the appointed Plan administrator, which report remains under review by staff; and
7. An application for a Declaration that the Guarantee Fund applies to the Plan was filed by the appointed administrator on May 29, 2003.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The funded ratio of the Plan has been estimated to be 63.06%.
2. The estimated claim against the Guarantee Fund as at the wind up date is $1,248,965.
3. The employer, Marsh Engineering Limited, was assigned into bankruptcy on December 6, 2000. The participating employer, Marsh Instrumentation Inc., was assigned into bankruptcy on December 7, 2000.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. The Administrator has also advised that if funds become available for the Plan from the estates of Marsh Engineering Limited and Marsh Instrumentation Inc., such funds will be used to refund any allocation amounts received from the Guarantee Fund.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 27th day of June, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Frost Fence Inc. Bargaining Unit Pension Plan for Members of United Steelworkers of America, Registration Number 697441 (the "Plan");**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary

Appointed Administrator

AND TO: **Frost Fence Inc.**
250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer

Employer

AND TO: **United Steelworkers of America**
1031 Barton Street East
Room 113
Hamilton ON L8L 3E3

Attention: Mr. Ron Wyatt,
Staff Representative, Local 3561

Union representing the members of the Plan

AND TO: **Paul M. Casey & Associates, Ltd.**
c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON M5C 2V9

Attention: Mr. Adam Bryk

Trustee in Bankruptcy

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Frost Fence Inc. Bargaining Unit Pension Plan for Members of United Steelworkers of America (the "Plan"), is registered under the Act as Registration Number 697441; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed The Standard Life Assurance Company administrator of the Plan on April 17, 2003; and
4. The Deputy Superintendent, Pensions, issued a Notice of Proposal on July 17, 2003 to make an Order that the Plan be wound up effective December 20, 2002; and
5. The appointed administrator has assessed the solvency ratio of the Plan at the proposed wind up date to be 75.5%, and has reduced pensions in payment from the Plan to 75.5% of the full benefit effective July 1, 2003 until further notice; and
6. The appointed administrator will be filing an application for a Declaration that the Guarantee Fund applies to the Plan.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The funded ratio of the Plan has been estimated to be 75.5%.
2. The claim against the Guarantee Fund as at the wind up date is estimated to be $4,639,000.
3. The employer, Frost Fence Inc., was assigned into bankruptcy on December 20, 2002.
4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. If funds become available for the Plan from the estate of Frost Fence Inc., the appointed administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 18th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Pension Plan for Non-Union employees of Frost Fence Inc., Registration Number 697433 (the "Plan");**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary

Appointed Administrator

AND TO: **Frost Fence Inc.**
250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer

Employer

AND TO: **Paul M. Casey & Associates, Ltd.**
c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON M5C 2V9

Attention: Mr. Adam Bryk

Trustee in Bankruptcy

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Non-Union employees of Frost Fence Inc. (the "Plan"), is registered under the Act as Registration Number 697433; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Deputy Superintendent, Pensions, appointed The Standard Life Assurance Company administrator of the Plan on April 17, 2003; and
4. A Notice of Proposal to Make an Order that the Plan be wound up effective December 20, 2002, was issued by the Deputy Superintendent, Pensions, on July 17, 2003; and
5. The appointed administrator has assessed the solvency ratio of the Plan at the proposed wind up date to be 74.3%, and has reduced pensions in payment from the Plan to 74.3% of the full benefit effective July 1, 2003 until further notice; and
6. The appointed administrator will be filing an application for a Declaration that the Guarantee Fund applies to the Plan.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The funded ratio of the Plan has been estimated to be 74.3%.
2. The potential claim against the Guarantee Fund as at the wind up date is estimated by the appointed administrator to be $1,382,000.
3. The employer, Frost Fence Inc. was assigned into bankruptcy on December 20, 2002.

4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. If funds become available for the Plan from the estate of Frost Fence Inc., the appointed administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 18th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pensions
Financial Services Commission of Ontario

[1]NOTE — Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Frost Fence Inc. Bargaining Unit Pension Plan for Members of United Steelworkers of America, Registration Number 697441 (the "Plan");**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary

Appointed Administrator

AND TO: **Frost Fence Inc.**
250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer

Employer

AND TO: **United Steelworkers of America**
1031 Barton Street East
Room 113
Hamilton ON L8L 3E3

Attention: Mr. Ron Wyatt,
Staff Representative, Local 3561

Union representing the members of the Plan

AND TO: **Paul M. Casey & Associates, Ltd.**
c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON M5C 2V9

Attention: Mr. Paul M. Casey

Trustee in Bankruptcy

ORDER

ON or about July 17, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated July 17, 2003, to Make an Order that the Plan be wound up in whole effective December 20, 2002, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective December 20, 2002.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

DATED at North York, Ontario, this 19th day of September, 2003.

Tom Golfetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Pension Plan for All Salaried and Non-Union Hourly Employees of Participating Affiliates of Bracknell Corporation, Registration Number 0956789 (the "Pension Plan");**

TO: **Manufacturers Life Insurance Company**
500 King North
P.O. Box 1602
Waterloo ON N2J 4C6

Attention: Yolanda Pingos
Administrator of the Pension Plan

AND TO: **Bracknell Corporation**
400 Weston Road
Toronto ON M9L 3A2

Attention: Kae Baiocco,
Benefits Administrator
Employer

ORDER

ON the 12th day of May 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 6th day of May, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole the Pension Plan for All Salaried and Non-Union Hourly Employees of Participating Affiliates of Bracknell Corporation, Registration No. 0956789.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Pension Plan for All Salaried and Non-Union Hourly Employees of Bracknell Corporation, Registration No. 0956789, be wound up in whole effective November 1, 2001, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
3. All or a significant portion of the employer's business carried on by the employer at a specific location is discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

PricewaterhouseCoopers Inc.
145 King Street West
Suite 900
Toronto ON M5H 1V8

Attention: Roger Deck
Interim Receiver for The State Group Limited, a Participating Affiliate of Bracknell Corporation

DATED at Toronto, Ontario, this 2nd day of June, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting the **Registered Pension Plan for Employees of SuperPac Acquisitions Inc., Registration Number 1054071 (the "Plan");**

TO: **Sun Life Financial and Clarica**
Group Savings Legislation and Documentation
227 King Street South
Waterloo ON N2J 4C6

Attention: Ms. Audrey Humphrey

Appointed Administrator of the Plan

AND TO: **SuperPac Acquisitions Inc.**
777 Laurel Street
Cambridge ON N3H 3Z1

Attention: Ms. Pearl Evans

Employer

AND TO: **Spergel & Associates Inc.**
505 Consumers Road
Suite 200
North York ON M2J 4V8

Receiver for SuperPac Acquisitions Inc.

ORDER

ON the 13th day of June 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order (the "Notice of Proposal") to the Administrator of the Plan, the Employer, and the Receiver for the Employer, pursuant to subsection 69(1) of the Act, that the Plan be wholly wound up effective January 23, 2002.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Plan be wholly wound up effective January 23, 2002.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

DATED at Toronto, Ontario, this 8th day of August, 2003.

Tom Golfetto,
Director, Pension Plans Branch

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting **Commercial Aluminum (1993) Limited Hourly Employees Pension Plan, Registration Number 1010289 (the "Pension Plan");**

TO: **Thompson Actuarial Limited**
87 Wolverleigh Blvd.
Toronto ON M4J 1R8

Attention: Andre Choquet, FCIA, FSA
Actuary

Administrator of the Pension Plan

AND TO: **Commercial Aluminum Limited**
240 Barton Road
Weston ON M9M 2W6

Attention: Suzanne Lam-Fitzgibbon

Employer

ORDER

ON the 23rd day of June 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 20th day of June, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Commercial Aluminum (1993) Limited Hourly Employees Pension Plan, Registration Number 1010289.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Commercial Aluminum (1993) Limited Hourly Employees Pension Plan, Registration Number 1010289, be wound up in whole effective December 31, 2001, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund;
2. The employer fails to make contributions to the pension fund as required by this Act or the regulation;
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada);
4. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;
5. All or a significant portion of the employer's business carried on by the employer at a specific location is discontinued; and
6. All or part of the employer's business or all or part of the assets of the employer's are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for members of the employer's pension plan who becomes employee of the person.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

SF Partners Inc.
(formerly Solursh Feldman Goldberg Inc.)
The Madison Centre
4950 Yonge Street, Suite 400
Toronto ON M2N 6K1

Attention: Brahm Rosen,
Senior Vice President

Trustee in Bankruptcy for Commercial Aluminum (1993) Limited

United Steelworkers of America
115 Albert Street
P.O. Box 946
Oshawa ON L1H 7N1

Attention: Wess Dowsett

Staff Representative

DATED at Toronto, Ontario, this 10th day of September, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

Orders that the Pension Plan be Wound Up

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under subsection 69(1) of the Act relating to the **Pension Plan for Employees of Pelee Group, Registration Number 1062512;**

TO: **London Life Insurance Company**
Group Retirement Services
255 Dufferin Avenue
London ON N6A 4K1

Attention: Ms. Nancy Galpin

Administrator of the Pension Plan for Employees of Pelee Group, Registration Number 1062512

AND TO: **Pelee Group**
P.O. Box 85
Kingsville ON N9Y 2E8

Attention: Ms. Paula Pope

Employer

ORDER

ON or about the 22nd day of January, 2003, the Deputy Superintendent, Pensions, issued to the Administrator and to the Employer a Notice of Proposal to Make an Order pursuant to subsection 69(1) of the Act, that the Pension Plan for Employees of Pelee Group, Registration Number 1062512, be wholly wound up effective November 30, 2001, and that the wind up apply to all members who terminated employment on or after October 14, 2001.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Pension Plan for Employees of Pelee Group, Registration Number 1062512, be wholly wound up effective November 30, 2001 and that the wind up apply to all members who terminated employment on or after October 14, 2001.

REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act; and
2. There was a failure of the employer to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.

DATED at Toronto, Ontario, this 12th day of March, 2003.

Tom Golfetto,
Director, Pension Plans Branch

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, relating to the **Pension Plan for the Non-Union Employees of Frost Fence Inc., Registration Number 697433 (the "Plan");**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary

Appointed Administrator

AND TO: **Frost Fence Inc.**
250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer

Employer

AND TO: **Paul M. Casey & Associates, Ltd.**
c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON M5C 2V9

Attention: Mr. Paul Casey

Trustee in Bankruptcy

ORDER

ON or about July 17, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated July 17, 2003, to Make an Order that the Plan be wound up in whole effective December 20, 2002, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective December 20, 2002.

REASONS:

1. Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
2. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
3. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

DATED at North York, Ontario, this 19th day of September, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Pension Plan for the Employees of Canadian Sport & Fitness Administration Centre, Registration Number 0452870 (the "Pension Plan");**

TO: **London Life Insurance Company**
255 Dufferin Avenue
London ON N6A 4K1

Attention: Darlene Sundercock,
Wind-up Specialist,
Group Retirement Services

Administrator of the Pension Plan

AND TO: **Canadian Sport & Fitness Administration Centre**
760 Belfast Road
Ottawa ON K1G 0Z5

Attention: Donia Albert,
Director of Finance

Employer

ORDER

ON the 5th day of August, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 5th day of August, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole the Pension Plan for the Employees of Canadian Sport & Fitness Administration Centre, Registration Number 0452870.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Pension Plan for the Employees of Canadian Sport & Fitness Administration Centre, Registration Number 0452870, be wound up in whole effective August 30, 2001, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
4. All or a significant portion of the business carried on by the employer at a specific location is discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Deloitte & Touche Inc.
1000 Royal Bank Centre
90 Sparks Street
Ottawa ON K1P 5TB

Attention: Stanley Loisalle

Trustee in Bankruptcy of Canadian Sport & Fitness Administration Centre

DATED at Toronto, Ontario, this 24th day of September, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Ward Press Limited Pension Plan, Registration Number 0583187 (the "Pension Plan");**

TO: **Sun Life Assurance Company of Canada**
225 King Street West
Toronto ON M4V 3C5

Attention: Paul Browett,
Pension Account Representative

Administrator of the Pension Plan

AND TO: **Ward Press Limited**
82 Carnforth Road
North York ON M4A 2K7

Attention: Donald Ward
President

Employer

ORDER

ON the 5th day of August, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated the 30th day of July, 2003, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole the Ward Press Limited Pension Plan, Registration Number 0583187.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Ward Press Limited Pension Plan, Registration Number 0583187, be wound up in whole effective June 30, 2001, for the following reasons:

1. There was a cessation or suspension of Employer contributions to the pension fund.
2. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.
4. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

BDO Dunwoody Limited
Royal Bank Plaza
P.O. Box 33
Toronto ON M5J 2J9

Attention: Mark G. Chow,
Vice-President

Receiver and Manager of Ward Press Limited

DATED at Toronto, Ontario, this 24th day of September, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Deputy Superintendent, Pensions, to Make an Order under section 69 of the Act, respecting the **Pension Plan for Toronto Employees of SDMS Communications Ltd., Registration Number 1000710;**

TO: **Manulife Financial**
500 King Street North
P.O. Box 1602
Waterloo ON N2J 4C6

Attention: Yolanda Pingos,
Discontinuance Underwriter

Appointed Administrator

AND TO: **SDMS, IMS Integrated Mailing Services**
220 Bartley Drive
Toronto ON M4A 1G2

Attention: The President

Employer

AND TO: **A. Farber & Partners Inc.**
300-1200 Sheppard Avenue East
North York ON M2K 2R8

Attention: Frieda Vasiloff

Trustee in Bankruptcy

ORDER

ON the 29th day of November, 2001, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order, pursuant to subsection 69(1) of the Act, that the Pension Plan for Toronto Employees of SDMS Communications Ltd., Registration Number 1000710 (the "Plan"), be wholly wound up effective March 31, 1993.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Plan be wholly wound up effective March 31, 1993.

REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund pursuant to clause 69(1)(a) of the Act.

DATED at North York, Ontario, this 24th day of October, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services

Order that the Board of Trustees Pay out of a Pension Fund the Cost of an Examination, Investigation or Inquiry

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF an Order under subsection 106(13) of the PBA made by the Superintendent of Financial Services relating to the **Plumbers Local 463 Pension Plan, Registration Number 0598532 (the "Plan");**

TO: **Board of Trustees of the Plumbers Local 463 Pension Plan Trust Fund**
26 Caristrap Street, Unit 3
Bowmanville, ON
L1C 3Y7

Attention: Larry Cann
Chairman of the Board of Trustees of the Plumbers Local 463 Pension Plan Trust Fund

Administrator of the Plan

ORDER

I ORDER:

a) That the Board of Trustees of the Plumbers Local 463 Pension Plan Trust Fund (the "Board of Trustees") pay out of the Plumbers Local 463 Pension Plan Trust Fund (the "Fund") all of the cost of the examination, investigation or inquiry conducted by Morneau Sobeco and Deloitte & Touche LLP in respect of the Plan and the Fund; and

b. That the Board of Trustees pay out of the Fund all of the cost of the reports prepared by Morneau Sobeco and/or Deloitte & Touche LLP following the examination, investigation or inquiry referred to in paragraph (a) of this order.

REASONS:

1. The Plan is a multi-employer pension plan administered by the Board of Trustees. The Plan primarily provides defined contribution pension benefits.
2. The Superintendent of Financial Services (the "Superintendent") received concerns from certain Plan members (the "concerned members") that the Plan is not being administered in accordance with the PBA and regulations made under the PBA. Specifically, the concerns focussed on issues with the administration of the Plan and certain real estate investments held by the Plan.
3. After an initial examination of documents associated with the Plan performed by employees of the Financial Services Commission of Ontario (FSCO), it was determined that given the nature of the review and the resources internally available it was necessary to retain external resources to complete the examination. In order to fully examine the issues raised and to ensure that the Plan was being administered in accordance with the PBA and regulations made under the PBA, the Superintendent solicited proposals from qualified firms to perform an examination of the Plan in relation to the concerns and to produce a report relating to that examination. In response to this request, the Superintendent received a proposal from the firms of Morneau Sobeco and Deloitte & Touche LLP (the "Examiners") to perform an examination, investigation or inquiry in respect of the Plan in relation to the concerns. The Superintendent accepted the proposal made by the Examiners and designated the Examiners to perform an examination, investigation or inquiry in

respect of the Plan under section 106 of the PBA (the "Examination") on April 11, 2002.

4. The Examiners completed the Examination in respect of administrative and governance aspects of the Plan and issued a Preliminary Report covering these topics dated November, 2002. The Examination in respect of the real estate investments was subsequently completed and a final report including findings on the real estate investments (the "Final Report") was delivered in April 2003. The Examiners have provided invoices setting out the fees and disbursements associated with the Examination and the production of the Preliminary and Final Reports (together the "Reports"). A summary of the invoices including the calculation of the total fees and expenses in the amount of $172,458.66 is attached as Schedule "A." The actual invoices are attached as Schedule "B."
5. Copies of the Reports have been provided to the Board of Trustees and the concerned members. Both of these groups have had an opportunity to make submissions concerning the issue of who should bear the cost of the Examination in light of the contents of the Reports. Submissions concerning the cost issue were, in fact, received by the Superintendent from the Board of Trustees and certain of the concerned members.
6. Subsection 106 (13) of the PBA states that the "Superintendent may order any person to pay all or part of the cost of an examination, investigation or inquiry" and "to pay all or part of the cost of any opinion, report or professional attestation prepared following such an examination, investigation or inquiry ... if the Superintendent considers it to be reasonable and fair in the circumstances to do so." Subsection 106 (14) specifically states that "an administrator or employer may be required to make a payment under" subsection 106 (13) of the PBA.
7. The Superintendent considers it reasonable and fair in the circumstances of this case to order the Board of Trustees to pay the cost of the Examination and Reports out of the Fund for the following reasons:

a. The aim of the Examination was to ensure that the Plan was being administered in accordance with the PBA and regulations made under the PBA thus protecting the pension benefits of the members of the Plan. As such, the members of the Plan as a whole will benefit from the Examination because it will result in compliance with the PBA, better administration of the Plan and a greater degree of protection for members' pension benefits. Therefore, it is reasonable and fair in the circumstances that the members as a whole should indirectly bear the cost of the Examination by requiring that the cost of the Examination and Reports be paid out of the Fund.

b. Certain documents and information required by the Examiners and requested from the Board of Trustees were not readily available to the Board of Trustees and therefore to the Examiners. Owing to inconsistent record-keeping practices, the Board of Trustees was required to obtain some documents and information from the Trustees' current or former agents and advisors. Certain documents and information were never provided because they did not exist or because they were unavailable to the Board of Trustees. As a result, the Examination was prolonged and made more complex.

c. Section 106(13) of the PBA permits the Superintendent to order any person to pay the cost of the Examination and Reports where it is reasonable and fair in the circumstances to do so. Section 106(13) is not limited to the recovery of the costs of an examination performed using externally retained resources as in this case.

d. The Examination involved extensive inquiries and the review of extensive documentation. The real estate transactions that were considered in the Examination were complex and involved a number of different parties. The Final Report comprised some 36 pages of findings.

e. It is not "reasonable and fair" to order that the concerned members bear some or all of the cost of the Examination and Reports because the concerned members have raised legitimate issues concerning the administration of the Plan and certain investments held by the Plan. While the motivation for expressing the concerns is not known to the Superintendent, it is clear that the concerns were not frivolous. In addition, the receipt of concerns or enquiries from pension plan members is an important mechanism to assist the Superintendent in enforcing the requirements of the PBA. A requirement that the concerned members pay some or all of the cost of the Examination and Reports may have a chilling effect on members of the Plan or other pension plans who would otherwise bring concerns to FSCO's attention.

f. It is not reasonable and fair to order that the Trustees personally bear some or all of the cost of the Examination and Reports because the majority of the current Trustees were not on the Board of Trustees at the time of the majority of the decisions and actions under consideration in the Examination.

DATED at North York, Ontario, October 6th, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Pension Plan for Employees of Kanematsu (Canada) Inc., Registration No. 394650;**

TO: **Kanematsu (Canada) Inc.**
c/o Brans, Lehun, Baldwin LLP
2401-120 Adelaide Street west
Toronto, Ontario
M5H 1T1

Attention: Mr. Thomas C.H. Baldwin
Applicant and Employer

CONSENT

ON or about July 8, 2003, the Superintendent of Financial Services caused to be served on Kanematsu (Canada) Inc. a Notice of Proposal dated July 4, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for Employees of Kanematsu (Canada) Inc. Registration No. 394650 (the "Plan"), to Kanematsu (Canada) Inc. in the amount of $109,554 as of December 1, 1999, plus 50% of investment earnings on the surplus to the date of payment less 50% of expenses relating to the wind-up of the Pension Plan for Employees of Kanematsu (Canada) Inc.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for Employees of Kanematsu (Canada) Inc., Registration No. 394650, of $109,554 as of December 1, 1999, plus 50% of investment earnings on the surplus to the date of payment less 50% of expenses relating to the wind-up of the Pension Plan for Employees of Kanematsu (Canada) Inc., to Kanematsu (Canada) Inc.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefit enhancements pursuant to the Surplus Sharing Agreement) and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 29th day of August, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Retirement Plan for the Employees of W&S Services Limited, Registration No. 0397554;**

TO: **Sutherland-Schultz Inc.**
P.O. Box 5006
401 Fountain Street North
Cambridge, ON N3H 5P3

Attention: Wayne Brohman,
Manager, Financial Services

Applicant and Employer

CONSENT

ON or about June 2, 2003, the Superintendent of Financial Services caused to be served on Sutherland-Schultz Inc. a Notice of Proposal dated May 30, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Retirement Plan for the Employees of W&S Services Limited, Registration No. 0397554 (the "Plan"), to Sutherland-Schultz Inc. in the amount of $148,170 as at April 30, 2002, plus investment earnings minus expenses incurred thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Retirement Plan for the Employees of W&S Services Limited, Registration No. 0397554, of $148,170 as at April 30, 2002, plus investment earnings minus expenses incurred thereon to the date of payment to Sutherland-Schultz Inc.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits and other payments, including any enhancements arising from the Surplus Sharing Agreement, to which members, former members, and any other persons entitled on the wind up of the Plan, have been settled.

DATED at Toronto, Ontario, this 18th day of July, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services

copy: Claude N. Marchessault,
Barrister & Solicitor

Rick Jeffrey

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Staff Pension Plan of the Institute of Chartered Accountants of Ontario, Registration No. 207290;**

TO: **The Public Accountants Council for the Province of Ontario**
Suite 901
1200 Bay Street
Toronto, Ontario
M5R 2A5

Attention: Mr. Peter LaFlair,
Registrar

Applicant and Employer

CONSENT

ON or about July 10, 2003, the Superintendent of Financial Services caused to be served on the Public Accountants Council for the Province of Ontario a Notice of Proposal dated July 10, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Staff Pension Plan of the Institute of Chartered Accountants of Ontario, Registration No. 207290 (the "Plan"), to The Public Accountants Council for the Province of Ontario in the amount of $669,897 as of July 1, 2000, subject to adjustments for investment earnings or losses and expenses, to the date of payment

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Staff Pension Plan of the Institute of Chartered Accountants of Ontario Registration No. 207290, of $669,897 as of July 1, 2000, subject to adjustments for investment earnings or losses and expenses to the date of payment, to The Public Accountants Council for the Province of Ontario

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefit enhancements pursuant to the Surplus Sharing Agreement) and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 29th day of August, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services

Consents to Payments of Surplus out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to payment out of the **Retirement Plan for Significant Shareholder Employees of John C. Bourinot Sales Limited, Registration No. 411959;**

TO: **John C. Bourinot**
John C. Bourinot Sales Limited
c/o Stephen O'Neill,
CFP, CLU, CH.F.C.
Sun Life of Canada
245 Fairview Mall Drive
Willowdale ON M2J 4T1

Applicant and Employer

CONSENT

ON or about May 12, 2003, the Superintendent of Financial Services caused to be served on John C. Bourinot Sales Limited a Notice of Proposal dated May 9, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Retirement Plan for Significant Shareholder Employees of John C. Bourinot Sales Limited, Registration No. 411959 (the "Plan"), to John C. Bourinot Sales Limited in the amount of $384,900 as of August 1, 2000, subject to adjustments for investment earnings or losses and expenses, to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Retirement Plan for Significant Shareholder Employees of John C. Bourinot Sales Limited, Registration No. 411959, of $384,900 as of August 1, 2000, subject to adjustments for investment earnings or losses and expenses to the date of payment, to John C. Bourinot Sales Limited.

DATED at Toronto, Ontario, this 15th day of July, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services

c. Timothy B. Lawrence, F.S.A., F.C.I.A.,
Cowan Wright Limited

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act, consenting to a payment out of the **Pension Plan for Designated Employees of Complete Packaging Limited, Registration Number 0698571;**

TO: **Complete Packaging Limited**
P.O. Box 24010
2470 Wyandotte Street East
Windsor, ON N8Y 4Y9

Attention: Pat Dumas

Applicant and Employer

CONSENT

ON or about July 17, 2003, the Superintendent of Financial Services caused to be served on Complete Packaging Limited a Notice of Proposal dated July 17, 2003, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for Designated Employees of Complete Packaging Limited, Registration Number 0698571 (the "Plan"), to Complete Packaging Limited in the amount of $118,503 as at March 31, 2001, plus investment earnings thereon to the date of payment less the expenses relating to the wind up of the Plan.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for Designated Employees of Complete Packaging Limited, Registration Number 0698571, of $118,503 as at March 31, 2001, plus investment earnings less the expenses relating to the wind up of the Plan, to Complete Packaging Limited.

DATED at Toronto, Ontario, this 22nd day of September, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Donna Wolfe,
Cowan Wright Beauchamp Limited

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to consent to a transfer of assets from the **Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511,** to the **Weyerhauser Retirement Plan for Salaried Employees, British Columbia Registration No. 51-303,** under section 80 of the Act;

AND IN THE MATTER OF A Notice of Proposal issued by the Superintendent of Financial Services to refuse to register an amendment to the **Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511,** under section 18(1)(d) of the Act.

TO: **Bowater Canadian Forest Products Inc.**
1000 de la Gauchetiere West
Suite 2820
Montreal QC H3B 4W5

Attention: Claudine Morin-Massicotte
Administrator

ORDER

ON or about the 18th day of July, 2003, the Superintendent of Financial Services (the "Superintendent") issued a Notice of Proposals (the "Notice of Proposals") to the Administrator of the Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511 wherein he proposed to:

1. **REFUSE TO CONSENT TO** the transfer of assets from the Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511 (the "Bowater Plan"), to the Weyerhauser Retirement Plan for Salaried Employees, British Columbia Registration No. 51-303 (the "Weyerhauser Plan") referred to in the Report on the transfer of assets and liabilities dated November 22, 2001 (the "Asset Transfer Report") with respect to members included in the Dryden/Ear Falls Asset Purchase Agreement as at September 29, 1998 under section 80 of the Act (inadvertently referred to in the Notice of Proposals as section 81); and
2. **REFUSE TO REGISTER** an amendment to the Bowater Plan in relation to the Application for Registration of Pension Plan Amendment (the "Amendment") dated March 19, 2001, under section 18(1)(d) of the Act.

NOTICE requiring a hearing was not delivered to the Financial Services Tribunal by the Applicant or any other party within the time frame prescribed by subsection 89(6) of the Act.

THEREFORE the Superintendent:

1. **REFUSES TO CONSENT** to the transfer of assets from the Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc., Registration No. 355511 (the "Bowater Plan"), to the Weyerhauser Retirement Plan for Salaried Employees, British Columbia Registration No. 51-303 (the "Weyerhauser Plan") referred to in the Report on the transfer of assets and liabilities dated November 22, 2001 (the "Asset Transfer Report") with respect to members included in the Dryden/Ear Falls Asset Purchase Agreement as at September 29, 1998 under section 80 of the Act (inadvertently referred to in the Notice of Proposals as section 81); and

2. **REFUSES TO REGISTER** an amendment to the Bowater Plan in relation to the Application for Registration of Pension Plan Amendment (the "Amendment") dated March 19, 2001, under section 18(1)(d) of the Act.

DATED at Toronto, Ontario, this 3rd day of October, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to consent to a transfer of assets from the **Pension Plan for Salaried Employees of TCG Materials Limited**, **Registration Number 390526** to the **Pension Plan for the Designated Employees of Blue Circle Canada Inc. and Subsidiary Companies, Registration Number 530493**, under section 81(5) of the Act;

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to register an amendment to the **Pension Plan for Salaried Employees of TCG Materials Limited**, **Registration Number 390526**, under section 18(1)(d) of the Act;

AND IN THE MATTER OF a Notice of Proposal issued by the Superintendent of Financial Services to refuse to register an amendment to the **Pension Plan for the Designated Employees of Blue Circle Canada Inc. and Subsidiary Companies**, **Registration Number 530493**, under section 18(1)(d) of the Act.

TO: **Blue Circle Canada Inc.**
c/o St. Marys Cement Inc.
55 Industrial St., 2nd floor
Toronto, ON M4G 3W9

Attention: Patricia Brundit,
Manager Human Resources Services

Employer and Administrator

ORDER

ON or about July 18, 2003, the Superintendent of Financial Services ("Superintendent") issued a Notice of Proposal to Refuse (the "Notice of Proposal") to Blue Circle Canada inc., the Employer and Administrator, wherein he proposed to:

1. **REFUSE TO CONSENT** to the transfer of assets referred to in the Report on the Actuarial Valuation for funding Purposes as of January 1, 1999, prepared by William M. Mercer Limited (the "Transfer Report") from the Pension Plan for the Salaried Employees of TCG Materials Limited, Registration Number 390526 (the "TCG Plan") to the Pension Plan for the Designated Employees of Blue Circle Canada Inc. and Subsidiary Companies (formerly the Pension Plan for the Designated Employees of St. Marys Cement Corporation and Subsidiary Companies), Registration Number 530493 (the "Blue Circle Plan"), under section 81(5) of the Act;
2. **REFUSE TO REGISTER** Amendment No. 1 to the TCG Plan effective December 31, 1998, attached to the Application for Registration of Pension Plan Amendment (the "TCG Amendment No. 1"), under section 18(1)(d) of the Act; and
3. **REFUSE TO REGISTER** Amendment No. 4 to the Blue Circle Plan effective January 1, 1999, attached to the Application for Registration of Pension Plan Amendment (the "Blue Circle Amendment No. 4"), under section 18(1)(d) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with the Notice of Proposal.

THEREFORE THE SUPERINTENDENT:

1. **REFUSES TO CONSENT** to the transfer of assets referred to in the Transfer Report from the TCG Plan to the Blue Circle Plan, under section 81(5) of the Act;

2. **REFUSES TO REGISTER** the TCG Amendment No. 1, under section 18(1)(d) of the Act; and
3. **REFUSES TO REGISTER** the Blue Circle Amendment No. 4, under section 18(1)(d) of the Act.

REASONS:

1. An application was made to the Superintendent for consent to a transfer of assets from the TCG Plan to the Blue Circle Plan as of January 1, 1999 (the "Asset Transfer"). As required by Financial Services Commission of Ontario Policy A700-251 the Transfer Report was filed with the Superintendent as part of the application for consent to the Asset Transfer.
2. The Transfer Report shows that the TCG Plan (which is the exporting Plan) has a solvency excess of $637,800 as of January 1, 1999 and the Blue Circle Plan (which is the importing plan) has a solvency deficiency of $6,802,700 as of January 1, 1999, before the Asset Transfer and will have a solvency deficiency of $6,164,900 as at January 1, 1999, after the Asset Transfer.
3. Section 81(5) of the Act requires the Superintendent's consent to the Asset Transfer, whether section 81(1) or section 81(8) of the Act applies to that transfer. Section 81(5) provides that:

   > The Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the original pension plan or that does not meet the prescribed requirements and qualifications.

4. Section 11(a) of FSCO Policy A700-251 provides that:

   > The Superintendent may decide that the benefits are not protected where:
   >
   > (a) the transfer ratio of the importing plan is less than the highest transfer ratio of the exporting plans, and is less than 1.0;

5. The Transfer Report indicates that transfer ratio of the exporting Plan (the TCG Plan) prior to the Asset Transfer is 1.19 (after rounding) and the transfer ratio of the importing Plan (the Blue Circle Plan) is .93 (after rounding) both before and after the Asset Transfer. Therefore, the pension and other benefits of the members and former members of the exporting plan (the TCG Plan) are not protected in the Asset Transfer.
6. Therefore the Superintendent refuses to consent to the Asset Transfer from the TCG Plan to the Blue Circle Plan, under section 81(5) of the Act.
7. In order to facilitate the Asset Transfer, Blue Circle Canada Inc. filed an application to register the TCG Amendment No. 1 with the Superintendent.
8. TCG Amendment No. 1 provides that members shall cease accruing benefits under the TCG Plan effective December 31, 1998, shall commence accruing benefits under the Blue Circle Plan effective January 1, 1999 and the assets and liabilities shall be transferred from the TCG Plan to the Blue Circle Plan, subject to the prior approval of such transfers by the appropriate regulatory authorities (which would include the Superintendent). Upon the transfer of assets and liabilities, the TCG Plan shall be terminated. The TCG Plan, with the TCG Amendment No. 1 would cease to comply with the Act because

the pension and other benefits of the members and former members of the TCG Plan would not be protected under section 81(5) of the Act if the Asset Transfer and therefore the TCG Amendment No 1 were consented to and registered respectively.

9. In order to facilitate the Asset Transfer, Blue Circle Canada Inc. filed an application to register the Blue Circle Amendment No. 4 with the Superintendent.

10. Blue Circle Amendment No. 4 provides that TCG Plan members shall commence accruing benefits under the Blue Circle Plan on terms identical to the TCG Plan up to June 30, 1999 and effective July 1, 1999 the TCG Plan members shall contribute and accrue benefits in accordance with the Blue Circle Plan; the Blue Circle Plan is amended to assume liabilities for all benefits accrued under the TCG Plan in respect of all active and non-active members of the TCG Plan; and the assets from the TCG Plan shall be transferred to the Blue Circle Plan after all regulatory approvals have been obtained. The Blue Circle Plan with the Blue Circle Amendment No. 4 would cease to comply with the Act because the pension and other benefits of the members and former members of the TCG Plan would not be protected under section 81(5) of the Act if the Asset Transfer and therefore the Blue Circle Amendment No. 4 were consented to and registered respectively.

11. Therefore the Superintendent refuses to register the TCG Amendment No. 1 and the Blue Circle Amendment No. 4, under section 18(1)(d) of the Act.

DATED at Toronto, Ontario, September 10, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services

Refusals to Consent to Applications for the Payment of Surplus out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF an Application under section 78(1) of the Act submitted by **Marks & Spencer Canada Inc.** in respect of the **Retirement Income Plan for Employees of Marks & Spencer Canada Inc., Registration Number 387241;**

TO: **Marks & Spencer Canada Inc.**
c/o Baker & McKenzie
Barristers & Solicitors
BCE Place, 181 Bay Street,
Suite 2100
P.O. Box 874
Toronto, ON M5J 2T3

Attention: Mrs. Susan G. Seller

Employer and Administrator of the Plan

AND TO: **CAW Local 1000 of National Automobile, Aerospace, Transportation and General Workers Union of Canada (also known as Retail Whole sale Canada — CAW Division)**
6800 Campobello Road
Mississauga, ON L5N 2L8

Attention: Mr. Mike Langdon

Union

REFUSAL TO CONSENT TO APPLICATION

ON or about November 18, 2002, the Superintendent of Financial Services issued a Notice of Proposal to Refuse to Consent to Application (the "NOP") to Marks & Spencer Canada Inc. (the "Employer"), in respect of the Employer's application dated March 30, 2001, for the payment of surplus to the Employer on the wind up of the Retirement Income Plan for Employees of Marks & Spencer Canada Inc., Registration Number 387241 (the "Plan"), under subsection 78(1) of the Act (the "Application").

NO REQUEST for Hearing was made to the Financial Services Tribunal in connection with the NOP to refuse to consent to the Application.

I THEREFORE REFUSE to consent to the Application.

DATED at North York, Ontario, June 26th, 2003.

K. David Gordon,
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Pension Plan for Non-Union employees of Frost Fence Inc., Registration Number 697433 (the "Plan");**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary

Appointed Administrator

AND TO: **Frost Fence Inc.**
250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer

Employer

AND TO: **Paul M. Casey & Associates, Ltd.**
c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON M5C 2V9

Attention: Mr. Adam Bryk
Trustee in Bankruptcy

DECLARATION

WHEREAS:

1. The Plan is registered under the Act as Registration Number 697433; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. On April 17, 2003, the Deputy Superintendent, Pensions, appointed The Standard Life Assurance Company Administrator of the Plan; and
4. Effective July 1, 2003, the Administrator reduced pensions in payment from the Plan to 74.3% of the full benefit to reflect the estimated funded ratio of the Plan; and
5. On July 18, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Plan with the understanding that the Administrator would make an application for such a Declaration; and
7. On August 5, 2003, the Administrator filed a wind up report for the Plan effective December 20, 2002; and
8. On August 26, 2003, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan, with reference to the said wind up report, and
9. On this day September 19, 2003, the Superintendent of Financial Services issued an order to wind up the Plan effective December 20, 2002; and
10. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received with respect to the notice of proposal to make the Declaration.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

1. The Administrator has determined the Wind Up Funded Ratio of the Plan to be 74.3%.

2. The potential claim against the Guarantee Fund as at the wind up date is estimated by the appointed Administrator to be $1,386,761.00.
3. The Employer, Frost Fence Inc., was assigned into bankruptcy on December 20, 2002.
4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. If funds become available for the Plan from the estate of Frost Fence Inc., the appointed Administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.

DATED at North York, Ontario, this 19th day of September, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Revised Pension Plan for Salaried Employees of Marsh Engineering Limited, Registration Number 276030;**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney

Appointed Plan Administrator ("Administrator")

AND TO: **Marsh Engineering Limited**
118 West Street
Port Colborne ON L3K 4C9

Attention: Charlotte Watson,
Payroll Administrator

Employer

AND TO: **Marsh Instrumentation Inc.**
1016-C Sutton Drive
Burlington ON L7L 6B8

Attention: Ronald Bake,
President

Participating Employer

AND TO: **Deloitte & Touche Inc.**
181 Bay Street, Suite 1400
BCE Place
Toronto ON M5J 2V1

Attention: Robert Paul,
Partner

Trustee in Bankruptcy

DECLARATION

WHEREAS:

1. The Revised Pension Plan for Salaried Employees of Marsh Engineering Limited (the "Plan"), is registered under the Act as Registration Number 276030; and
2. Marsh Instrumentation Inc. is a participating employer in the Plan; and
3. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
4. The Superintendent of Pensions, appointed Arthur Andersen Inc. Administrator of the Plan on May 15, 2000, and the Deputy Superintendent, Pensions, subsequently replaced them by appointing Morneau Sobeco as Administrator on July 10, 2002; and
5. The Plan was ordered wound up by the Deputy Superintendent, Pensions, effective March 16, 2000; and
6. The proposals for the distribution of the Plan's assets as set out in a wind up report filed by the appointed Plan Administrator, have been approved by staff on August 13, 2003, subject to any additional funding that may be required from the Guarantee Fund; and
7. An application for a Declaration that the Guarantee Fund applies to the Plan was filed by the Administrator on May 29, 2003; and
8. On July 2, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal, dated June 27, 2003, to make a Declaration that the Guarantee Fund applies to the Plan; and

9. No request for a hearing by the Financial Services Tribunal in respect of the Notice of Proposal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 68.06%.
2. The estimated claim against the Guarantee Fund as at the wind up date is $598,548.
3. The employer, Marsh Engineering Limited, was assigned into bankruptcy on December 6, 2000. The participating employer, Marsh Instrumentation Inc., was assigned into bankruptcy on December 7, 2000.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. The Administrator has also advised that if funds become available for the Plan from the estates of Marsh Engineering Limited and Marsh Instrumentation Inc., such funds will be used to refund any allocation amounts received from the Guarantee Fund.

DATED at Toronto, Ontario this 27th day of August, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Frost Fence Inc. Bargaining Unit Pension Plan for Members of United Steelworkers of America, Registration Number 697441 (the "Plan");**

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Ms. Annie Doucet, FCIA, FSA
Actuary

Appointed Administrator

AND TO: **Frost Fence Inc.**
250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer

Employer

AND TO: **United Steelworkers of America**
1031 Barton Street East
Room 113
Hamilton ON L8L 3E3

Attention: Mr. Ron Wyatt,
Staff Representative, Local 3561

Union representing the members of the Plan

AND TO: **Paul M. Casey & Associates, Ltd.**
c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON M5C 2V9

Attention: Mr. Adam Bryk

Trustee in Bankruptcy

DECLARATION

WHEREAS:

1. The Plan is registered under the Act as Registration Number 697441; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. On April 17, 2003, the Superintendent of Financial Services appointed The Standard Life Assurance Company Administrator of the Plan; and
4. Effective July 1, 2003, the Administrator reduced pensions in payment from the Plan to 75.5% of the full benefit to reflect the estimated funded ratio of the Plan; and
5. On July 18, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Plan with the understanding that the Administrator would make an application for such a Declaration; and
6. On August 5, 2003, the Administrator filed a wind up report for the Plan, effective December 20, 2002; and
7. On August 26, 2003, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan, with reference to the said wind up report; and
8. On this day September 19, 2003, the Superintendent of Financial Services issued an order to wind up the Plan effective December 20, 2002; and
9. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received with respect to the notice of proposal to make the Declaration.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

1. The Administrator has determined the Wind Up Funded Ratio of the Plan to be 74.0%.
2. The claim against the Guarantee Fund as at the wind up date is estimated to be $4,667,330.
3. The employer, Frost Fence Inc., was assigned into bankruptcy on December 20, 2002.
4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. If funds become available for the Plan from the estate of Frost Fence Inc., the appointed Administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.

DATED at North York, Ontario this 19th day of September, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

Declarations that the Pension Benefits Guarantee Fund Applies to Pension Plans — Subsection 83(1) of the *Pension Benefits Act*

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act, relating to the **Revised Pension Plan for Hourly Rated Employees of Marsh Engineering Limited, Registration Number 384313;**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney

Appointed Plan Administrator ("Administrator")

AND TO: **Marsh Engineering Limited**
118 West Street
Port Colborne ON L3K 4C9

Attention: Charlotte Watson,
Payroll Administrator

Employer

AND TO: **Marsh Instrumentation Inc.**
1016-C Sutton Drive
Burlington ON L7L 6B8

Attention: Ronald Bake,
President

Participating Employer

AND TO: **Deloitte & Touche Inc.**
181 Bay Street, Suite 1400
BCE Place
Toronto ON M5J 2V1

Attention: Robert Paul,
Partner

Trustee in Bankruptcy

AND TO: **United Steelworkers of America, Local 4433**
2601 Highway 20, East
Unit 7
Fonthill ON L0S 1E6

Attention: Bryan Adamczyk

Union Representative of the Plan members

DECLARATION

WHEREAS:

1. The Revised Pension Plan for Hourly Rated Employees of Marsh Engineering Limited, (the "Plan"), is registered under the Act as Registration Number 384313; and
2. Marsh Instrumentation Inc. is a participating employer in the Plan; and
3. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
4. The Superintendent of Pensions, appointed Arthur Andersen Inc. Administrator of the Plan on May 15, 2000, and the Deputy Superintendent, Pensions, subsequently replaced them with Morneau Sobeco on July 10, 2002; and
5. The Plan was ordered wound up by the Deputy Superintendent, Pensions, effective March 16, 2000; and
6. The proposals for the distribution of the Plan's assets as set out in a wind up report filed by the appointed plan Administrator, have been approved by staff on August 13, 2003, subject to any additional funding that may be required from the Guarantee Fund; and
7. An application for a Declaration that the Guarantee Fund applies to the Plan was filed by the appointed administrator on May 29, 2003; and

8. On July 2, 2003 the Deputy Superintendent, Pensions, issued a Notice of Proposal, dated June 27, 2003, to make a Declaration that the Guarantee Fund applies to the Plan; and
9. No request for a hearing by the Financial Services Tribunal in respect of the Notice of Proposal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 63.06%.
2. The estimated claim against the Guarantee Fund as at the wind up date is $1,248,965.
3. The employer, Marsh Engineering Limited, was assigned into bankruptcy on December 6, 2000. The participating employer, Marsh Instrumentation Inc., was assigned into bankruptcy on December 7, 2000.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. The Administrator has also advised that if funds become available for the plan from the estates of Marsh Engineering Limited and Marsh Instrumentation Inc., such funds will be used to refund any allocation amounts received from the Guarantee Fund.

DATED at Toronto, Ontario this 27th day of August, 2003.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

Allocation of Money from the Pension Benefits Guarantee Fund

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act, respecting the **Pension Plan for Hourly Employees of Alumiprime Windows Limited (the "Pension Plan"), Registration Number 1021005;**

TO: **Morneau Sobeco**
1500 Don Mills Road
Toronto ON M3B 3K4

Attention: Mr. David Kearney
Administrator of the Pension Plan

ALLOCATION

WHEREAS on September 25, 2001, the Director, Pension Plans Branch, declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $395,400 which together with the Ontario assets of the Pension Plan, will provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 30th day of July, 2003.

K. David Gordon,
Deputy Superintendent, Pension Division

FINANCIAL SERVICES TRIBUNAL ACTIVITIES

Appointments of Financial Services Tribunal Board Members

Name and O.C.	Effective Appointment Date	Expiry Date
McNairn, Colin (Vice-Chair)		
O.C. 1623/2001	June 20, 2001	June 19, 2004**
O.C. 1809/98	July 8, 1998	July 7, 2001
Corbett, Anne (Vice-Chair Acting)		
O.C. 1438/2001	June 20, 2001	June 19, 2004**
Ashe, Kevin		
O.C. 1510/2002	September 26, 2002	September 25, 2005
Bharmal, Shiraz Y.M.		
O.C. 1511/2002	September 9, 2002	September 8, 2005
Erlichman, Louis		
O.C. 439/2002	January 23, 2002	January 22, 2005**
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
Gavin, Heather		
O.C. 440/2002	January 23, 2002	January 22, 2005**
O.C. 11/99	January 13, 1999	January 12, 2002
Litner, Paul W.		
O.C. 1512/2002	September 9, 2002	September 8, 2005
Moore, C.S. (Kit)		
O.C. 1625/2001	June 20, 2001	June 19, 2004**
O.C. 1591/98	July 1, 1998	June 30, 2001
Short, David A.		
O.C. 2118/2001	October 24, 2001	October 23, 2004**
Vincent, J. David		
O.C. 2119/2001	October 24, 2001	October 23, 2004**

****Or on the day FSCO/OSC merges, if earlier**

Pension Hearings Before the Financial Services Tribunal

Imperial Oil Limited

Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number 344002, FST File Number P0130-2000;

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve Partial Wind Up Reports in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each Wind Up Report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind up period; (b) apply the grow-in provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial wind up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superintendent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the order subject to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies. Written Reasons for Order dated September 10, 2001, were published in Volume 11, Issue 1 of the Pension Bulletin.

A continuation of the pre-hearing conference was held on December 20, 2001. The pre-hearing conference was adjourned to allow the parties to bring motions with respect to answers to interrogatories. On July 24, 2002, the Tribunal heard two motions. The Applicant's notice of motion dated June 7, 2002, asked for an order of the Tribunal directing the Superintendent to provide further and better answers to some of its interrogatories. The Tribunal made an order directing the Superintendent to respond to certain of the interrogatories but with some modifications. Reasons for Order dated September 11, 2002, were published in Volume 12, Issue 1 of the Pension Bulletin. The time for the Superintendent's response under this Order was extended by Consent Order dated October 22, 2002.

The Superintendent's notice of motion dated June 5, 2002, asked for an order of the Tribunal directing the Applicant to answer those interrogatories it had served on the Applicant on October 11, 2001, that remained outstanding. The Tribunal made an order directing the Applicant to respond to certain of the interrogatories but with some modifications. The Reasons for Order dated September 20, 2002, were published in Volume 12, Issue 1 of the Pension Bulletin.

The pre-hearing conference scheduled to resume on December 18, 2002, was rescheduled to February 27, 2003, and was further adjourned to April 28, 2003, at the request of the parties, due to ongoing settlement discussions. The April 28, 2003 pre-hearing conference did not proceed at the request of the parties. On May

30, 2003, the parties asked that the matter continue to be adjourned *sine die* pending resolution of the issues in the proceeding.

Crown Cork & Seal Canada Inc., Registration Numbers 474205, 595371 & 338491, FST File Number P0165-2001;

On June 29, 2001, Crown Cork & Seal Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated May 29, 2001, to refuse to consent to a transfer of assets proposed by Crown Cork & Seal Canada Inc. from the Crown Cork & Seal Canada Inc. Pension Plan for Salaried Employees, Registration Number 0474205 and the Pension Plan for Clerical Employees of Crown Cork & Seal Canada Inc., Registration Number 0595371, into the Crown Cork & Seal Canada Inc. Pension Plan for Employees, Registration Number 338491. The basis for the refusal is that the asset transfer does not protect the pension benefits and other benefits of the members and former members of the Plans.

At the request of both parties a settlement conference was held on October 30, 2001, prior to the scheduling of a pre-hearing conference. At the settlement conference the parties agreed to adjourn the matter *sine die* pending discussions between the parties.

On February 11, 2003, counsel for the Superintendent requested a pre-hearing conference be scheduled as the parties were unable to resolve the issues in this matter. At the pre-hearing conference on May 12, 2003, the parties stated they would contact the Registrar to resume the pre-hearing conference if they did not resolve the issues at a settlement meeting on May 26, 2003. On June 20, 2003, the parties advised that they expect the settlement discussions to continue.

The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the application for payment of surplus to the employer, pursuant to section 78(1) of the *Pension Benefits Act*, from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.

A pre-hearing conference was held on April 25, 2002, at which time the parties agreed to a settlement conference. The settlement conference date of July 16, 2002 was rescheduled at the parties' request and was held on September 4, 2002. At the settlement conference the matter was adjourned *sine die*.

On February 7, 2003, counsel for the Superintendent requested the pre-hearing conference be reconvened. The pre-hearing conference was held on April 17, 2003. At the hearing on July 14, 2003, the panel reserved its decision.

Marcel Brousseau, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0183-2002;

On February 20, 2002, Marcel Brousseau, a member of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated January 22, 2002, to refuse to make an Order in respect of the Plan Administrator's determination, pursuant to section 87 of the *Pension Benefits Act*, of Mr. Brousseau's pensionable service under the terms of the Plan.

A pre-hearing conference was held on August 27, 2002. At the pre-hearing conference, the Superintendent raised a jurisdictional issue which it was agreed would be dealt with through a motion. The parties agreed that the issue on the motion was whether, given the November 19, 2001 decision of the Superior Court of Justice in *Board of Trustees of the Electrical Industry of Ottawa Pension Plan v. Cybulski*, Court File No. 01-CV-18268, the Tribunal has jurisdiction to proceed in the circumstances of this case?

At the motion hearing on November 29, 2002, the Superintendent argued that the Tribunal did not have jurisdiction to hear the Applicant's request because the issue that is the subject of the Applicant's request for hearing was decided by the Ontario Superior Court of Justice. The Superintendent therefore argued that the doctrine of issue estoppel applies and precludes the Tribunal from holding a hearing. In its majority reasons dated October 27, 2003, the Tribunal determined that the doctrine of issue estoppel does not apply and that even if it did, this was a proper case for the exercise of the Tribunal's discretion to refuse to apply that doctrine. The Reasons for Decision dated October 27, 2003, are published in this bulletin on page 136.

At a resumption of the pre-hearing conference on November 12, 2003, hearing dates for February 2-3, 2004 were agreed to.

Kerry (Canada) Inc., Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0191-2002;

On May 22, 2002, Kerry (Canada) Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated April 22, 2002, proposing to make an Order that Kerry (Canada) Inc.:

- reimburse the pension fund (the "Fund") of the Plan for all amounts paid out of the Fund from January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members and retired members of the Plan;
- reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund; and
- amend the Plan and the trust (the "Trust") in respect of the Fund so that the provisions of the Plan and the Trust relating to the deduction of expenses from the Fund are consistent with the 1954 versions of the Plan and the Trust.

On June 10, 2002, an application for party status was filed by Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R. A. Varney and Bill Fitz, being the members of the DCA Employees Pension Committee.

At the pre-hearing conference on October 15, 2002, full party status was granted to the individuals comprising the DCA Employees Pension Committee, representing the members and retired members of the Plan. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, an order for disclosure was issued against Kerry (Canada) Inc.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

At a resumption of the pre-hearing conference on May 5, 2003, the parties agreed to attend a settlement conference to deal with the issue of

expenses. The settlement conference scheduled for July 7, 2003, was rescheduled to August 19, 2003.

At a resumption of the pre-hearing conference on September 19, 2003, the parties agreed that the hearing will proceed on October 27, 28, 29, 2003, but only with respect to the giving of evidence by non-expert witnesses. The hearing will resume on January 7-9, 2004, for additional non-expert and expert witness testimony. On January 26-27, 2004, oral arguments will take place.

Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R.A. Varney and Bill Fitz being the members of the DCA Employees Pension Committee, Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0192-2002;

On May 27, 2002, William Fitz on behalf of the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice of Proposal, dated April 22, 2002, proposing to refuse to make an Order that:

- the Plan be wound up, effective December 31, 1994;
- Kerry (Canada) Inc. pay to the pension fund (the "Fund") of the Plan all employer contributions for which a contribution holiday was taken since January 1, 1985, together with income that would have been earned by the Fund if those contributions had been made; and
- registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused.

On June 5, 2002, an application for party status was filed by Kerry (Canada) Inc.

At the pre-hearing conference on October 15, 2002, full party status was granted to Kerry (Canada) Inc. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, three orders for disclosure were issued, one against Kerry (Canada) Inc., one against the DCA Employees Committee and one against the Superintendent.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

On June 5, 2003, the pre-hearing conference resumed to deal with the framing of the "partial wind-up issue." The DCA Employees Pension Committee indicated that it would be bringing a motion for an order that would add an issue to or otherwise amend the matters in issue. That motion and another motion by Kerry (Canada) Inc. to amend the "partial wind up issue" were heard on June 25, 2003. At the hearing, the parties agreed on a revised wording of the "partial wind up issue," and it was ordered that the statement of the issues in the proceeding be amended accordingly.

At a resumption of the pre-hearing conference on October 14, 2003, the parties agreed that the hearing will proceed on March 2-5, 2004, but only with respect to the giving of evidence. On May 26-27, 2004, oral arguments will take place.

Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338, FST File Number P0203-2002;

On October 31, 2002, Slater Steel Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated September 27, 2002, to make an Order under section 69(1)(d) of the *Pension Benefits Act*, that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be employed by Slater Steel Inc. effective from March 13, 1998 to January 26, 2000, as a result of the reorganization of the business of Slater Steel Inc.

On November 7, 2002, an application for party status was filed by John Hughes.

At the pre-hearing conference on February 11, 2003, full party status was granted to John Hughes. At the pre-hearing conference, Slater Steel Inc. and the Superintendent indicated that they would be bringing motions with respect to disclosure. On May 13, 2003, the parties agreed to adjourn the May 14, 2003 motion date, to permit the parties time to resolve the disclosure issues altogether or at least narrow the issues to be determined by the Tribunal. The motion was rescheduled to August 7, 2003 but it did not proceed.

On June 2, 2003, an Order was issued by the Ontario Superior Court of Justice in relation to Slater Steel Inc., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings. The hearing in this matter originally scheduled for October 8-10, 15-16, 2003, therefore did not proceed.

George Polygenis, Public Service Pension Plan, Registration Number 0208777, FST File Number P0204-2002;

On November 12, 2002, George Polygenis requested a hearing regarding the Superintendent's Notice of Proposal dated October 11, 2002, to refuse to make an Order, under section 87(1) of the Act, that the Pension Policy Committee of the Ontario Pension Board reconsider its decision denying a disability pension to the Applicant under section 14(1) of the Public Service Pension Plan.

On November 26, 2002, an application for party status was filed by the Ontario Pension Board.

At a pre-hearing conference on January 27, 2003, full party status was granted to the Ontario Pension Board, and the parties agreed to a settlement conference. The settlement conference was held on February 10, 2003 and is to continue at some future date with the participation of Mr. Polygenis' employer as well as the expected parties.

It was determined at the pre-hearing conference that a preliminary motion will be heard to determine "What degree of deference should the Tribunal exercise in reviewing the decision of the Board denying the Applicant entitlement to a disability pension"? The motion was scheduled for March 26, 2003. On March 14, 2003, the parties agreed to adjourn the motion hearing date *sine die*.

On May 29, 2003, the parties consented to adjourn the June 11, 2003 hearing date *sine die*, pending finalization of a settlement.

Barbara Lewis, Retirement Plan for Unionized Employees of Donohue Forest Products Inc., Pulp and Paper Divisions — Thorold Sector, Registration Number 0294496, FST File Number P0207-2002;

On November 18, 2002, Barbara Lewis requested a hearing regarding the Superintendent's Notice of Proposal dated November 8, 2002, to refuse to make an Order under section 87(2)(a) and (c) of the Act, requiring Donohue Forest Products Inc. to comply with sections 37(3)(b) and 48(1) of the Act and the terms of the Plan in the calculation of the pre-retirement death benefits payable from the Plan to Barbara Lewis, spouse of the late Harold Lewis.

On February 6, 2003, an application for party status was filed by Abitibi-Consolidated Company of Canada (formerly Donohue Forest Products Inc.). At the pre-hearing conference on February 21, 2003, full party status was granted to Abitibi-Consolidated Company of Canada.

On May 12, 2003, a motion for disclosure brought by the Applicant was heard. The motion was dismissed.

The hearing was held on July 2, 2003, September 22, and 25, 2003, at which time the panel reserved its decision.

Ontario Teachers' Pension Plan Board, Ontario Teachers' Pension Plan, Registration Number 0345785, FST File Number P0217-2003;

On February 25, 2003, the Ontario Teachers' Pension Plan Board requested a hearing regarding the Superintendent's Notice of Proposal dated January 8, 2003, to make an Order under sections 87(2)(a) and (c) of the Act, requiring the Administrator of the Plan to pay Ronald A. Wilson, a former member of the Plan, his pension in the form of a joint and survivor pension in accordance with section 44(1) of the *Pension Benefits Act*.

On March 20, 2003, an application for party status was filed by Jane Kalbfleisch-Wilson, the former spouse of Ronald A. Wilson. At the pre-hearing conference date on May 26, 2003, full party status was granted to Jane Kalbfleisch-Wilson.

On June 16, 2003, an application for party status was filed by Ronald A. Wilson. At a resumption of the pre-hearing conference on June 23, 2003, full party status was granted to Ronald A. Wilson.

The hearing was held on September 24, 2003. In its reasons dated October 14, 2003, the Tribunal directed the Superintendent, by order, to refrain from carrying out the Notice of Proposal. The Tribunal determined that the Board acted properly in determining that Mr. Wilson's pension need not be a joint and survivor pension, since Mr. Wilson was living separate and apart from his wife before February 29, 2000, the earliest possible due date for payment of the first installment of his pension. The Reasons for Decision dated October 14, 2003, are published in this bulletin on page 131.

Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456, FST File Number P0220-2003;

On March 17, 2003, Slater Stainless Corp. requested a hearing regarding the Superintendent's Notice of Proposal dated February 17, 2003, to make an Order pursuant to section 88 of the Act, requiring the preparation of a new valuation report for the Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456.

The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464, FST File Number P0221-2003;

On March 17, 2003, Slater Stainless Corp. requested a hearing regarding the Superintendent's Notice of Proposal dated February 17, 2003, to make an Order pursuant to section 88 of the Act, requiring the preparation of a new valuation report for the Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464.

The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

Bestfoods Canada Inc., Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration Number 240358, FST File Number P0222-2003;

On March 24, 2003, Mr. Gerry O'Connor requested a hearing regarding the Superintendent's Notice of Proposal dated February 25, 2003, to refuse to make an Order, pursuant to section 69 (1) (d) or (e) of the *Pension Benefits Act*, to wind up, in part, the Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration Number 240358.

On April 11, 2003, an application for party status was filed by Unilever Canada Inc., the successor to Bestfoods Canada Inc. At the pre-hearing conference on June 25, 2003, full party status was granted to Unilever Canada Inc. The pre-hearing conference was adjourned to allow the parties the opportunity to resolve some preliminary issues and to allow the Applicant to bring a motion, as necessary, with respect to disclosure of documents and notice of hearing. The motion hearing scheduled for September 22, 2003, was rescheduled to November 3, 2003, at the request of the parties. At the end of the hearing on the motion, the Tribunal made Orders framing the issues in the proceeding, establishing the requirements for giving notice of the main hearing and requiring disclosure by Unilever Canada Inc. and the Superintendent of certain material relevant to the issues in the proceeding. The pre-haring conference is scheduled to be reconvened, after disclosure has been made, on March 8, 2004.

Jane Parker Bakery Limited Retirement Plan for Full-time Bargaining Employees, Registration Number 0400325, FST File Number P0224-2003;

On April 22, 2003, the Great Atlantic & Pacific Company of Canada, Limited, (the "Applicant") requested a hearing regarding the Superintendent's Notice of Proposal dated March 24, 2003, to refuse to consent to the application dated October 2, 2001, made by the Applicant, for payment out of the pension fund for the Jane Parker Bakery Limited Retirement Plan for Full-time Bargaining Employees, Registration Number 0400325 (the "Plan"), of an overpayment by the Applicant to the pension fund for the Plan. The overpayment arose as a result of the Applicant's funding of a deficit in the Plan on wind up, which proved to be more than ade-

quate to meet the deficit. The Superintendent maintains that the overpayment constitutes surplus in the Plan and can only be paid out to the Applicant in accordance with s.79 of the *Pension Benefits Act*.

On September 8, 2003, the parties advised they agreed to proceed with settlement discussions, and requested that the pre-hearing conference scheduled for September 10, 2003, be adjourned to a date to be determined if one becomes necessary.

Weavexx Corporation Retirement Income Plan for Arnprior Hourly-Paid Employees of Weavexx Corporation, Registration Number 0264655, FST File Number P0227-2003;

On July 3, 2003, BTR Canada Finance Inc., (the "Applicant") requested a hearing regarding the Superintendent's Notice of Proposal dated May 30, 2003, to refuse to consent to the application dated September 22, 1999 submitted by Weavexx Corporation, for payment of surplus on the windup of the Plan to the Employer under subsection 78(1) of the *Pension Benefits Act*.

On September 12, 2003, an application for party status was filed by the Union of Needletrades, Industrial & Textile Employees — CLC.

On November 12, 2003, the Applicant withdrew the request for hearing. The pre-hearing conference scheduled for November 14, 2003, was subsequently cancelled.

Boilermakers' National Pension Plan (Canada), Registration Number 0366708, FST File Number P0228-2003;

On October 7, 2003, Trustees of the Boilermakers' National Pension Plan (Canada) (the "Plan") requested a hearing regarding the Superintendent's Notice of Proposal dated September 22, 2003. By the terms of the Notice of Proposal, the Superintendent proposes to;

- revoke or refuse to register certain amendments to the Plan which provide that a member is deemed not to be retired unless he or she has withdrawn from employment in the construction industry, or to reduce an early retirement benefit for a member who is re-employed by an employer not participating in the Plan, on the grounds that these amendments impose additional requirements for, or restrictions on the continued receipt of, early retirement benefits in breach of s. 40(2) of the *Pension Benefits Act* (the "Act");
- direct the trustees of the Plan to cease requiring members who are retiring early to confirm that they will cease working in the boilermaker industry, on the grounds that no such requirement is set out in the Plan; and
- refuse registration of a Plan amendment that would allow a Plan member to terminate membership in the Plan if contributions were not made on his or her behalf by a participating employer but only if the member withdraws from employment in the construction industry, on the grounds that this qualification would add a further condition to the right to terminate membership in contravention of s. 38(1) of the Act.

A pre-hearing conference is scheduled for December 8, 2003.

Plumbers Local 463 Pension Plan, Registration Number 0598532, FST File Number P0230-2003

On November 6, 2003, the Board of Trustees of Plumbers Local 463 Pension Plan Trust Fund requested a hearing regarding an Order dated October 6, 2003 of the Deputy Superintendent, Pensions, to make an Order under subsection 106(13) of the *Pension Benefits Act*. In his Order,

the Deputy Superintendent ordered that the Board of Trustees pay the cost of an examination, investigation or inquiry in respect of the Plan and pension fund for the Plan; and the cost of the reports prepared following the examination, investigation or inquiry referred to in paragraph (a) of the Order.

The pre-hearing conference date is pending.

The following cases are Adjourned *sine die*

- **Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 321554 and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 292946, FST File Number P0051-1999;**
  At a pre-hearing conference on July 6, 1999, the matter was adjourned *sine die*.
- **The Retirement Plan for Salaried Employees (Consumers Foods) of General Mills Canada, Inc., Registration Number 342042, FST File Number P0058-1999;**
  Matter continues to be adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Gerald Menard (Public Service Pension Plan, Registration Number 208777 and the Ontario Municipal Employees' Retirement System "OMERS", Registration Number 345983), FST File Number P0071-1999;**
  Matter adjourned *sine die* at a pre-hearing conference on February 21, 2000.
- **Consumers' Gas Ltd., Registration Number 242016, FST File Number P0076-1999;**
  At the pre-hearing conference on June 27, 2000, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Schering-Plough Healthcare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File Number P0085-1999;**
  Matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST File Number P0117-2000;**
  At the request of the parties, this matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Cooper Industries (Canada) Inc., Registration Number 0240622, FST File Number P156-2001;**
  The pre-hearing conference for May 27, 2002 was adjourned to a date to be set at the request of the parties, pending the outcome of the *Monsanto* case.
- **James MacKinnon (Labourers' Pension Fund of Central and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;**
  On July 10, 2002, the hearing dates were adjourned *sine die* on consent of the parties.
- **Molson Canada, Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666; Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094; and Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086, FST File Number P0187-2002;**

The pre-hearing conference scheduled for October 28, 2002, was adjourned *sine die* on consent of the parties.

- **Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;**
  At the pre-hearing conference on October 28, 2002, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.

Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

FST File Number	Superintendent of Financial Services' Notice of Proposal	Comments
U0225-2003	To Refuse to Consent dated May 15, 2003	Reasons For Decision dated July 17, 2003
U0226-2003	To Refuse to Consent dated May 27, 2003	Reasons For Decision dated July 14, 2003

Decisions to be Published

U0225-2003
U0226-2003
Ontario Teachers' Pension Plan Board (Wilson)
Marcel Brousseau

Financial Services Tribunal Decisions with Reasons

INDEX NO.:	FST File Number U0226-2003
DATE OF DECISION:	July 14, 2003
PUBLISHED:	Bulletin 13/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated May 27, 2003, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent, dated May 27, 2003, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

   > **67.-(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the current application (the "April 2003 Application", subsequently amended), which was made on the basis of low income, was within 12 months after the date of another successful application (the "November 2002 Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

   > **89. -(4)** Only one application may be made during each 12-month period.
   >
   > **(5)** An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the April 21, 2003 Application.

4. The November 2002 Application was signed by the Applicant on November 19, 2002. On December 23, 2002, the Superintendent consented to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore the November 2002 Application was a successful application.

5. On April 21, 2003, the Applicant signed the Current Application, in which he applied to withdraw funds from his locked-in account

on the basis of low income. As this application was made within 12 months after the successful November 2002 Application (made on the basis of low income), the April 2003 Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked — in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the April 2003 Application cannot be granted because it fails to meet the time requirement in the Regulation.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice of Proposal to Refuse to Consent, dated May 27, 2003, in respect of the April 2003 Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated May 27, 2003, directed to the Applicant.

DATED at Toronto, this 14th day of July, 2003.

Mr. J. P. Martin,
Member, Financial Services Tribunal

Ontario

INDEX NO.: FST File Number U0225-2003

DATE OF DECISION: July 17, 2003

PUBLISHED: Bulletin 13/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated May 15, 2003, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated May 15, 2003, denying the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

   > **67.–(5)** Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "Current Application"), which was signed on April 9, 2003 and was made on the basis of low income, was made within 12 months after the date of a previous successful application (the "Previous Application"), which was signed on March 7, 2003 and was also made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

   > **89.–(4)** Only one application may be made during each 12-month period.
   >
   > **(5)** An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal, based on written submissions from the Applicant and Superintendent, is whether or not the Superintendent should have consented to the Current Application.

4. The Superintendent has stated that the Applicant signed the Previous Application on March 7, 2003 resulting in the Superintendent's consent to the withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. The Applicant has not refuted this statement by the Superintendent, nor has he referred to the Previous Application in the Current Application. We conclude that the Previous Application was successful.

5. On April 9, 2003, the Applicant signed the Current Application, requesting consent to withdraw funds from his locked-in account on the basis of low income. As this application was made within 12 months after the successful Previous Application, which was also made on the basis of low income, the Current Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.
6. This Tribunal has no authority to direct the Superintendent to allow an application from a locked-in account that does not meet the requirements of the Regulation. The Current Application cannot be granted because it fails to meet one of those requirements, in that a previous application was made within the preceding 12 months, on the same basis of low income circumstances. The Tribunal cannot waive this Regulation in this situation, nor can the Tribunal direct the Superintendent to act contrary to this Regulation.
7. The Tribunal affirms the Superintendent's Notice to Propose to Refuse to Consent dated May 15, 2003, regarding the Current Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated May 15, 2003, directed to the Applicant.

DATED at Toronto, this 17th day of July, 2003.

Mr. Kit Moore,
Member, Financial Services Tribunal

INDEX NO.: FST File Number P0127-2003

PLAN: Ontario Teachers' Pension Plan, Registration No. 0345785 (the "Plan")

DATE OF DECISION: October 14, 2003

PUBLISHED: Bulletin 13/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 87(2) of the Act relating to the Ontario Teachers' Pension Plan, Registration No. 0345785 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act.

BETWEEN:

ONTARIO TEACHERS' PENSION PLAN BOARD

Applicant

-and-

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

-and-

JANE KALBFLEISCH-WILSON and RONALD WILSON

Additional Parties

BEFORE:

Colin H.H. McNairn,
Vice Chair of the Tribunal and
Chair of the Panel

Louis Erlichman,
Member of the Tribunal and of the Panel

David A. Short,
Member of the Tribunal and of the Panel

APPEARANCES:

For the Ontario Teachers' Pension Plan Board:

Lawrence E. Ritchie

Anna Zalewski

For the Superintendent:

Deborah McPhail

For Jane Kalbfleisch-Wilson:

Ari Kaplan

For Ronald Wilson:

Timothy F. Deeth

REASONS FOR DECISION

Facts

The Ontario Teachers' Pension Plan Board (the "Board") is the administrator of the Ontario Teachers' Pension Plan (the "Plan"), a pension plan for Ontario teachers that is registered under the *Pension Benefits Act* (the "Act").

Mr. Ronald Wilson ("Mr. Wilson") commenced membership in the Plan in 1969. He ceased employment as a teacher on January 31, 2000,

at which time he was entitled to receive an immediate and unreduced special early retirement pension under the terms of the Plan. Mr. Wilson completed an application for the pension to which he was entitled under date of February 7, 2000, requesting that his pension commence on February 1, 2000. That application was received by the Board on February 21, 2000.

Mr. Wilson and Ms. Jane Kalbfleisch-Wilson ("Mrs. Wilson") were married on March 21, 1970. They began living separate and apart on February 7 or 8, 2000.

The Board made the first payment to Mr. Wilson in respect of his pension on April 28, 2000. That payment related to the month of April. On May 10, the Board made a second payment to Mr. Wilson in respect of his pension — for the months of February and March of 2000. That payment included interest on the February pension amount calculated from February 29, 2000 and on the March pension amount calculated from March 31, 2000.

The pension that was paid to Mr. Wilson was not in the form of a joint and survivor pension, which would provide a continuing, although reduced, pension to Mrs. Wilson should she outlive Mr. Wilson.

By notice of proposal dated January 8, 2003 (the "Notice of Proposal"), the Superintendent of Financial Services (the "Superintendent") proposed to make an order under subsection 87(2) of the Act requiring the Board, as administrator of the Plan, to pay Mr. Wilson his pension in the form of a joint and survivor pension in accordance with subsection 44(1) of the Act. On February 25, 2003, the Board made a request for a hearing by this Tribunal in respect of that proposal. At a pre-hearing conference, Mr. Wilson and Mrs. Wilson were added, on separate applications, as parties to this proceeding, joining the Board and the Superintendent in that role.

Positions of the Parties

The Board has taken the position that Mr. and Mrs. Wilson were living separate and apart on the date that payment of the first instalment of Mr. Wilson's pension was due. In those circumstances, subsection 44(4)(b) of the Act provides an exception from the requirement, in subsection 44(1), that a pension paid to a member of a pension plan who has a spouse shall be a joint and survivor pension. The Board argued before the Tribunal that the earliest date by which payment of the first instalment of Mr. Wilson's pension could be said to be due was February 21, 2000, when the Board received Mr. Wilson's application to commence his pension and the actual due date, if it had to be determined, would be April 30, 2000 as Mr. Wilson's application was not complete until March, 2000.

The Superintendent maintained before the Tribunal that the Act equates the due date for payment of the first instalment of a pension with the member's entitlement to the pension, which in the present case was February 1, 2000, and nothing in the Plan can prevail over this minimum standard evidenced by the Act. Mrs. Wilson took the same position but put arguments forward in support that differed from those of the Superintendent.

Mr. Wilson did not make any arguments to the Tribunal, preferring to assume the role of observer in the hearing even though entitled, as a party, to make representations.

Relevant Provisions of the Act and the Plan

Subsections 44(1) to (4) of the Act are to the following effect:

> **44**. (1) Every pension paid under a pension plan to a former member who has a spouse or a same-sex partner on the date that the payment of the first instalment of the pension is due shall be a joint and survivor pension.
>
> (2) The commuted value of a joint and survivor pension under subsection (1) shall not be less than the commuted value of the pension that would be payable under the pension plan to the former member.
>
> (3) The amount of the pension payable to the survivor of the former member and the spouse or same-sex partner of the former member shall not be less than 60 per cent of the pension paid to the former member during the joint lives of the former member and his or her spouse or same-sex partner.
>
> (4) Subsections (1) to (3) do not apply,
>
> (a) in respect of a pension benefit if payment of the pension has commenced before the 1st of January, 1988; or

in respect of a former member who is living separate from his or her spouse or same-sex partner on the date the payment of the first instalment of the pension is due.

.....

The Plan provides in section 48 as follows:

> **48**. (1) The administrator shall begin payment of a member's retirement pension not later than the later of,
>
> (a) the month following the month in which the member ceases to be employed in education, or
>
> (b) the month following the month in which application for the pension is complete.
>
> (2) The administrator shall pay a retirement pension in monthly instalments on the last day of the month.
>
> (3) The administrator shall pay interest on late payments.

Analysis

The term "pension", which is used in subsections 44(1) and 44(4)(b) of the Act, is defined (in section 1 of the Act) as meaning a "pension benefit that is in payment". A "pension benefit" is defined, in turn, as meaning the aggregate amounts payable to a member to which the member will become entitled under a pension plan. Given the use of the term "pension", rather than "pension benefit", the clause "date that the payment of the first instalment of the pension is due", in subsections 44(1) and 44(4)(b), must refer to a pension that is already in the payment phase. Therefore, the due date for payment of the first instalment of a "pension" must logically follow a "pension benefit" coming into payment although it could, of course, come immediately thereafter.

Other provisions of the Act that turn on the time of commencement of payment of a pension or pension benefit use different wording from that in section 44, for example;

subsection 45(1) — "before commencing payment of a pension or pension benefit"

subsection 46(2) — "within 12 months preceding commencement of payment of the pension benefit"

subsection 46(3) — "before commencement of payment of the pension benefit"

subsection 48(1) — "before commencement of payment of the deferred benefit" (a "deferred benefit" means a pension benefit that is deferred until the normal retirement date; see section 1 of the Act)

subsection 51(1) — "the date on which payment of the pension benefit commences"

These provisions would all seem to relate to the time that a pension benefit becomes a pension, i.e. the effective date of a pension in pay. If subsections 44(1) and 44(4)(b) were meant to key off that date, we would expect to see language similar to that in these other provisions of the Act. But the subsections of section 44 refer to the "due" date for "payment of the first instalment of the pension". On a plain reading, this would indicate that the date in question represents the time at which there is an obligation to start the actual payment stream in respect of a pension benefit that has matured into a pension.

Subsection 41(5) of the Act allows a member of a pension plan who is entitled to a deferred pension and is within 10 years of reaching normal retirement age (the position of Mr. Wilson in this case) to make an election requiring that payment of an early retirement pension commence at the time of termination of employment (or at any time thereafter that is at or before the normal retirement date). We think that this election is simply to determine the commencement of the in-pay phase of the pension and is not meant to allow the member to fix the due date for the payment of the first instalment of the pension, as suggested by Mrs. Wilson.

We conclude that the date at which payment of the first instalment of a pension is due, in the sense of subsections 44(1) and 44(4)(b), should not be equated with the commencement date of the pension. But that does not resolve the question that we have to decide in this case, which is whether Mr. and Mrs. Wilson were living separate and apart by the due date for payment of the first instalment of Mr. Wilson's pension. The Act does not elaborate on how that due date is to be determined.

Since the Act does not, itself, provide a method for fixing the due date for payment of the first instalment of Mr. Wilson's pension, we must then consider the terms of the Plan in this regard. Subsection 48(2) of the Plan tells us that the due date for that payment cannot be earlier than February 29, 2000 because all monthly instalments of a pension provided for by the Plan are payable in arrears at the end of the month and Mr. Wilson's pension did not start until February 1, 2000, the date he elected for commencement of the pension.

As there is nothing in the Act that is inconsistent with payment of monthly instalments of a pension in arrears, effect must be given to subsection 48(2) of the Plan. Consequently, it informs the meaning of the phrase "date that payment of the first instalment of the pension is due" in subsections 44(1) and 44(4)(b) of the Act as applied to Mr. Wilson's early retirement pension.

Since Mr. Wilson was living separate and apart from his wife before February 29, 2000, the earliest possible due date for payment of the first instalment of his pension, subsection 44(4)(b) of the Act applies, with the result that the pension is not required to be a joint and survivor pension. Accordingly, the Board acted properly in determining the form of pension to be paid

to Mr. Wilson. In the circumstances, it is not necessary for us to decide the precise date at which payment of the first instalment of Mr. Wilson's pension came due.

We are not aware of any considerations relating to the policy or underlying aims of the Act that militate against our conclusion as to the earliest possible due date for payment of the first instalment of Mr. Wilson's pension. Generally speaking, any hardship to either spouse on a marriage breakdown that may be caused by one spouse failing to receive a joint and survivor pension or receiving such a pension can, of course, be redressed through the property division regime that applies on such a breakdown.

At the pre-hearing, the parties identified a second issue to be considered in this case, that is whether the Tribunal has the authority to determine the status of the pension payments that Mr. Wilson has already received and, if so, what relief ought to be directed in that regard. However, the parties recognized that this was a "live issue" only if the Tribunal were to conclude that Mr. Wilson should receive a joint and survivor pension. Accordingly, they reserved their arguments on this issue pending such a conclusion. It follows from our decision that it is not necessary to hear those arguments and address that issue.

DISPOSITION

In light of our conclusions in this matter, we direct the Superintendent, by order, to refrain from carrying out the proposal contained in the Notice of Proposal.

DATED at Toronto, this 14th day of October, 2003.

Colin H.H. McNairn,
Chair of the Panel

Louis Erlichman,
Member of the Panel

David A. Short,
Member of the Panel

INDEX NO.:	FST File Number P0183-2002
PLAN:	Electrical Industry of Ottawa Pension Plan Ontario, Registration No. 0586396 (the "Plan")
DATE OF DECISION:	October 27, 2003
PUBLISHED:	Bulletin 13/1 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, Chapter P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, Chapter 28 (PBA) (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services (the "Superintendent") to Refuse to Make an Order Under Section 87 of the Act Respecting a Request by Mr. Marcel Brousseau Relating to the Electrical Industry of Ottawa Pension Plan Ontario, Registration No. 0586396 (the "Plan");

AND IN THE MATTER OF a Hearing in Accordance with Subsection 89(8) of the Act.

BETWEEN:

MARCEL BROUSSEAU

Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

BEFORE:

Ms. Anne Corbett,
Vice Chair of the Tribunal
and Chair of the Panel

Ms. Heather Gavin,
Member of the Tribunal and of the Panel

Mr. David Vincent,
Member of the Tribunal and of the Panel

APPEARANCES:

Mr. Marcel Brosseau,
appearing on his own behalf

For the Superintendent of Financial Services:

Mr. Mark Bailey

HEARING DATE: November 29, 2002

MAJORITY REASONS FOR DECISION

Background

Mr. Brosseau is a member of the Electrical Industry of Ottawa Pension Plan (the "Plan").

This hearing results from a motion brought by the Superintendent in connection with a Notice of Proposal issued by the Superintendent on January 22, 2002 to refuse to make an Order that Mr. Brosseau receive credit for continuous service in the Plan for the period between November 1983 and August 1985.

The Plan is administered by the Board of Trustees of the Electrical Industry of Ottawa Pension Plan (the "Trustees"). The Plan covers members of the International Brotherhood of Electrical Workers, Local 586 ("IBEW, Local 586").

Mr. Brosseau originally wrote to the Pension Commission of Ontario in June 1998 with respect to his entitlement to credit for continuous service for the period from November 1983 to August 1985.

Mr. Brosseau had previously written to the plan administrator, Coughlin and Associates Limited with respect to his entitlement for credited service for the relevant period. That request was forwarded to the Trustees and by letter dated June 5, 1998 Mr. Brosseau was advised by Coughlin and Associates that the Trustees had concluded that the break in service from November 1, 1983 to August 31, 1985 was valid and that credits would not be granted for that period.

In February 2001 the Financial Services Commission of Ontario wrote to Mr. Brosseau informing him that they had concluded that the decision of the Trustees that Mr. Brosseau's pensionable service had been broken as a result of employment with a non-participating employer during the period November 1, 1983 to August 1985 was not in contravention of the requirements of the *Pension Benefits Act* and that the Trustees had not contravened the Act in exercising their discretion under the plan.

On August 31, 2001, the Trustees filed an Application in the Ontario Superior Court of Justice asking for the opinion, advice and direction of the Court whether the Trust Agreements and Pension Plan texts for the Plan should be interpreted to give members of the Plan "credited service" under the Plan for the periods before January 1, 1994 when they were not working for participating employers under the Plan for a continuous period of two years or more, or for a period of less than two years.

The parties to the Court Application were the Trustees, as applicants and Nelson Cybulski in his personal capacity and in his representative capacity as the Treasurer of the International Brotherhood of Electrical Workers Union Local 586, Electrical Contractors Association of Ottawa and the Superintendent of Financial Services as respondents.

The Court ordered that Notice of the Application be sent to all retired and non-retired plan members by express post mail and for those non-retired members whose addresses were unknown notice would be given by publication in newspaper advertisements published in the Ottawa Citizen, the National Post and Le Droit.

The Application was heard by the Court on November 7, 2001 and the Court's decision was released November 19, 2001 (the "Court Decision").

The Court found that the Trustees had established the practice prior to 1994 of giving plan members, whose employment by a participating employer was terminated, pension credits for a period of ninety (90) days following termination. If after ninety (90) days the members were still not working for a participating employer, the Trustees considered whether the member was "ready, willing and able" to work in the electrical industry and if so, exercise their discretion whether to continue to give the members credited service based on the individual circumstances in each case.

The respondent to the Court application and a number of plan members argued that the interpretation by the Trustees as to credited service did not conform with the wording of the Plan documents and argued that the restriction (that a member be "ready, willing and able to work in the electrical industry") was not justified and that credited service between the years 1974 to 1994 was not restricted. The Court identified the issue before it as follows:

> ... this Court is asked to determine if the Trustees have properly interpreted the Plan documents, and adequately exercised their discretion. Alternatively, should the Plan documents be interpreted as to give members of the Plan credited service under the Plan for all periods before January 1, 1994

when they had a break in service and were not working for a participating employers under the Plan?

The Court rejected the position taken by the respondents to the Court application and concluded that the interpretation and practice of the Trustees from 1974 to 1994 was the correct one.

Mr. Brosseau wrote to the Financial Services Commission in October 2001 with respect to his pension credits prior to 1985. In response to that letter the Deputy Superintendent issued a Notice of Proposal to issue an Order dated January 22, 2002 that the Trustees, in refusing to give Mr. Brosseau credited service during the lay off period from November 1983 to August 1985, had interpreted the Plan in compliance with the requirement of the *Pension Benefits Act*, the Regulations thereunder and the 1985 Plan text and 1987 Declaration of Trust.

At a prehearing conference the Superintendent raised the issue of the Tribunal's jurisdiction to hold a hearing with respect to this matter and the parties agreed that a preliminary motion would be heard by the full panel with respect to the Tribunal's jurisdiction to proceed with a hearing given the November 19, 2001 decision of the Superior Court of Justice as referred to above.

Analysis

The Superintendent argues that the Tribunal does not have jurisdiction to hear this matter because the issue that is the subject of Mr. Brosseau's request for a hearing was decided by the Ontario Superior Court of Justice. The Superintendent therefore argues that the doctrine of issue estoppel applies to this matter and precludes the Tribunal from holding a hearing. The Superintendent submits that the doctrine of issue estoppel requires that a Court or administrative tribunal should not adjudicate or hear a matter if another Court or administrative tribunal has already made a decision on the same point.

Issue estoppel is a common law doctrine. It applies to both Courts and administrative tribunals and prevents the litigation of a matter that has previously been the subject to a hearing by a Court or administrative tribunal. The doctrine of issue estoppel serves a public policy purpose that is often expressed as a twofold purpose, firstly that there be finality to litigation. The second aspect of the public policy purpose of issue estoppel serves the interest of justice between two parties – that a party should not be subject to multiple litigation with respect to the same issue.

There are however three requirements or preconditions that must be satisfied before a Court or an administrative tribunal may apply the doctrine of issue estoppel.

The Canadian Courts have consistently defined the requirements of issue estoppel as follows:

1. The same issue or question has been decided;
2. The judicial decision with respect to the issue is final; and
3. The parties to the initial judicial decision or their privies were the same persons as the parties or their privies to the subsequent proceedings in which the estoppel is raised.

Angle v. M.N.R. (1974), 17 O.R. (3d) 267, 112 D.L. R. 4th 683 (C.A.); *Minott v. O'Shanter Development Co.* (1999) 168, D.L.R. (4th) 270 (Ont. C.A.); *Danyluk v. Ainsworth Technologies Inc. et al* (2001) 201 D.L.R. (4th) 193 (S.C.C.);

Even where all three of the pre-conditions or requirements are satisfied, a Court or administrative tribunal retains the discretion to deter-

mine not to apply issue estoppel when to do so would cause unfairness or work an injustice. *(Minott v. O'Shanter Development Co., supra).* The exercise of discretion to refuse to give effect to issue estoppel only arises if the three pre-conditions have been satisfied.

We now turn to the application of the three requirements to the facts of this case.

1. Is The Issue That Was Before The Court The Same Issue To Be Considered By The Financial Services Tribunal?

Issue estoppel applies to issues of fact or of law or of mixed fact and law *(Danyluk v. Ainsworth Technologies Inc. et al, supra).*

The issue being considered in the subsequent litigation (in this case the issue coming before the Financial Services Tribunal) must have also been an issue decided in the earlier proceeding (ie: the Court proceeding held in November 2001). It is however not enough that the same issue be considered in both proceedings. The issue must be so fundamental to the earlier decision as to be essential to that decision. In *Minott v. O'Shanter Development Co. supra*, Laskin J.A. wrote at page 279:

> Issue estoppel first requires the issue in the subsequent litigation be the same as the issue decided in the previous litigation and that "its determination must have been necessary to the result in the litigation" [Holmsted and Watson, Ontario Civil Procedure, loose leaf, Volume II at 21 213[1]]. In other words, issue estoppel covers fundamental issues determined in the first proceeding, issues that were essential to the decisions. Issue estoppel applies to issues of fact or of law or of mixed fact and law.

In this case, the issue before the Court involved the Trustee's proper interpretation of the Plan documents and exercise of their discretion. In the decision, the issue before the Court is set out as follows:

> Basically, this Court is asked to determine if the Trustees have properly interpreted the Plan documents, and adequately exercised their discretion. Alternatively, should the Plan documents be interpreted as to give members of the Plan credited service under the Plan for all periods before January 1, 1994 when they had a break in service and were not working for a participating employer[s] (sic) under the Plan?

In our opinion, the question to be decided in these proceedings is in part, but not in its entirety, the question that was decided in the earlier proceedings before the Court.

The question to be decided in this proceeding relates to Mr. Brousseau's entitlement to benefits under the Plan. That is a question of mixed fact and law. There has been no determination in the earlier proceedings of the facts that will be in issue with respect to Mr. Brousseau's entitlement.

To the extent the question in issue in these proceedings relates to the interpretation of the Plan by the Trustees it could be argued that the first condition required to determine that the doctrine of issue estoppel applies is satisfied. We do not think, however, that it is necessary to apply the doctrine of issue estoppel in order to find that the Applicant is subject to the earlier proceeding with respect to the issue of Plan interpretation. A judicial decision on a point of law by an Ontario Court creates a precedent. Accordingly, to the extent the Court's decision is applicable to the facts of Mr. Brosseau's case, it is open to the Superintendent to argue that the Court Decision is to be followed by the Tribunal when it holds the hearing with respect to this issue.

Given our finding with respect to the first requirement it is not necessary for us to determine if the second or third requirement has been met. We will however set out our analysis with respect to these two requirements.

2. Was The Judicial Decision Final?

The Superintendent submits and we accept that the second requirement, that the judicial decision which is said to create the estoppel be final, has been met.

Where the decision that gives rise to the argument that issue estoppel should apply has been made by an administrative authority there will be a number of factors that must be considered in determining if a decision is a "judicial" decision. Those factors were set by Binnie, J. in *Danyluk v. Ainsworth Technologies Inc. et al*, supra (at p. 210) as follows:

> First is to examine the nature of the administrative authority issuing the decision. Is it an institution that is capable of receiving and exercising adjudicative authority? Secondly, as a matter of law, is the particular decision one that is required to be made in a judicial manner? Third as a mixed question of law and fact, was the decision made in a judicial manner? These are distinct requirements.

An examination of these elements does not arise where, as here, the decision that gives rise to the argument that issue estoppel applies is the final decision of a Court.

We are satisfied that the second requirement is met.

3. Were The Parties The Same?

The third condition required to be satisfied before the doctrine of issue estoppel applies is the requirement that parties to the first proceeding be the same as the parties to the second proceeding.

Mr. Brousseau was not a party to the Court proceeding. In order for the third requirement to be met we must conclude that Mr. Brousseau was a "privy."

A person who is not a party but who has a right to participate and declines to participate can be subject to the legal doctrine of issue estoppel in the latter proceeding if the individual is found to have been a "privy" to the first proceeding. In order for there to be a privy of interest there must be a sufficient degree of identification between the party and the privy.

A review of the case law is not helpful in determining the degree of interest which is required to create privity.

Counsel for the Superintendent argued that Mr. Brousseau was a privy to the parties in the Court proceeding on that basis that:

1. Mr. Brousseau received notice of the Court proceeding.
2. He had an opportunity to be a party.
3. A number of Plan members were granted leave to intervene and were added as respondents in the Court application.
4. The respondents in the Court application included the Treasurer of International Brotherhood of Electrical Workers Union Local 586, Electrical Contractors Association of Ottawa in a representative capacity who was represented by counsel.
5. The respondents appeared before the Court and argued for alternative interpretation of the Plan.
6. Mr. Brosseau was aligned in interest with the respondents to the Court proceeding.

It is our view that there is some degree of identification between the respondent in the Court proceeding and Mr. Brosseau with respect to the issue of plan interpretation that was before the Court and is part of the issue to be considered by the Financial Services Tribunal in this case. Given our finding with respect to the first requirement, the degree of identification is not sufficient to make him a privy. Accordingly, the third requirement of issue estoppel is not met.

Exercise of Discretion

Even if we had reached the conclusion that the three requirements to establish issue estoppel had been met on all issues to come before the Financial Services Tribunal in connection with this proceeding, we are of the view that this case is an appropriate one for the exercise of the retained discretion to refuse to apply issue estoppel.

Mr. Brousseau has presented his facts to the Superintendent and has received a Notice of Proposal to issue an Order. As required by the Act, the Notice states that Mr. Brosseau is entitled to a hearing by the Tribunal.

The subject matter of the hearing in this case involves the personal circumstances of Mr. Brosseau and the correct interpretation of the Plan by the Trustees. The issue of Plan interpretation has been determined by the Court but the applicability of that interpretation to Mr. Brosseau's circumstances was not the subject of the Court application. Mr. Brosseau is entitled to a hearing with respect to his personal circumstances.

The application of the doctrine of issue estoppel involves balancing the public policy considerations that litigation be final and that parties not be subjected to multiple proceedings with the rights of a litigant to be heard. *In Minott v. O'Shanter Development Co.*, supra, Laskin J.A. wrote (at page 228-289):

> Issue estoppel is a rule of public policy and, as a rule of public policy, it seeks to balance the public interest in the finality of litigation with the private interest in achieving justice between litigants. Sometimes these two interests will be in conflict, or at least there will be tension between them. Judicial discretion is required to achieve practical justice without undermining the principles on which issue estoppel is founded. Issue estoppel should be applied flexibly where an unyielding application of it would be unfair to a party who is precluded from re-litigating an issue.

We have considered the rights of the Trustees and in particular their right to not be subjected to multiple proceedings. We have balanced that right against the right of Mr. Brosseau to litigate his entitlement under the Plan. Having considered these competing interests we are of the view that, even if the doctrine of issue estoppel were to apply, it is appropriate in this case to exercise our discretion to not apply it and to proceed with a hearing on the merits.

DISPOSITION

Issue estoppel does not apply to prevent the Tribunal from holding a hearing on this matter. The parties should contact the Registrar to schedule dates for the hearing.

DATED at Toronto this 27th day of October, 2003.

Anne Corbett,
Chair of the Panel

Heather Gavin,
Member of the Panel

MINORITY REASONS

I have had the benefit of reading the reasons of the majority for which I am grateful. While I am sympathetic to Mr. Brosseau's circumstances, I have decided to dissent from the conclusion reached by my colleagues and I support the Superintendent's decision to refuse to make an order that Mr. Brosseau receive credit for service in the Plan for the relevant period.

On the question of issue estoppel, the reasons given in the Court Decision suggest the specific facts in Mr. Brosseau's case were known to the Court. In paragraph 12 of the reasons of the Court Decision, there is reference to the fact that one plan member raised the issue that was the cause of the application with the Financial Services Commission of Ontario. That member was Mr. Brosseau, which suggests that the Court was aware of the specific facts in Mr. Brosseau's case.

We were also provided with a copy of an affidavit sworn by Mr. Brosseau on November 2, 2001, five days prior to the Court application. I understand this affidavit was prepared with the assistance of the independent legal counsel appointed to represent members with an interest in the outcome of the application including Mr. Brosseau. The affidavit is some six pages in length and describes in some detail the facts surrounding Mr. Brosseau's break in service.

Unfortunately, the submissions made to the Tribunal by the counsel for the Superintendent of Financial Services do not address whether Mr. Brosseau's November 2, 2001 affidavit was actually filed with the Court prior to the application being heard. No clear evidence was produced on this point during oral argument before the Tribunal. Nonetheless, it seems reasonable to presume that Mr. Brosseau's affidavit was before the Court, given the proximity of the date it was sworn to the date of the Court application and given it was prepared with the assistance of the independent legal counsel appointed to represent members in the Court application. Even if the affidavit was not filed, in my opinion it is reasonable to infer from the Court Decision that the facts of Mr. Brosseau's case were before the Court. Cognizant of those facts, the Court ruled that the Trustees had exercised their discretion fairly. It is not open to this Tribunal, nor would it be appropriate, to question that result.

For all of the above reasons, I would support the Superintendent's position and rule that the Tribunal has no jurisdiction to hear this matter.

DATED at Toronto, this 27th day of October, 2003.

David Vincent,
Member of the Panel

Ontario

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